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Trade Policy Review Body

**TRADE POLICY REVIEW**

REPORT BY THE SECRETARIAT

EUROPEAN UNION

*Revision\**

This report, prepared for the eleventh Trade Policy Review of the European Union, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from the European Union on its trade policies and practices.

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Document WT/TPR/G/284 contains the policy statement submitted by the European Union.

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\* In English only.

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## SUMMARY

1. The EU, as a single entity, remains the largest trading bloc in the world and imports and exports continued to increase in 2011-12, although its share of world trade is declining due to faster growth in other countries. The EU is also an open economy with extra-EU trade in goods and services representing over 33% of GDP in 2011. Its rules and procedures are also transparent and, despite the wide diversity among its member States in terms of their economies, legal systems, and public institutions, it is a highly integrated economic unit with a single trade policy and common legislation in most trade-related areas.

2. The focus of EU policy over the past two years has been on the financial crises and there have been relatively few changes to trade policies, laws, or institutions in other areas. However, the fact that there has been no retreat into protectionism is, in itself, a positive sign. Among the causes of the crises were lack of appropriate fiscal reforms in a context of easy access to credit and low borrowing costs relative to economic growth for governments and the private sector which resulted in unsustainable levels of private and/or public sector debt and some banks' exposure to such debts. A related factor that exacerbated the crises was a decline in competitiveness in some member States as their unit labour cost and real effective exchange rates rose relatively quickly.

3. At both the EU and member State levels, steps are being taken to reduce public deficits and improve economic governance. The full implementation of those measures is expected to support economic recovery in 2013 and 2014.

4. In terms of customs procedures, the EU has been steadily moving towards an EU-wide system of electronic procedures with centralized clearance, with an ultimate deadline of 2020. Single authorizations for simplified procedures became more widely used during the review period. For goods coming from outside the EU, it is now possible to complete customs formalities at the port of arrival when the destination is in another member State while an "Entry Summary Declaration" may now be lodged at the destination instead of at the point of first entry, provided the particulars are communicated to the latter. The first project of the EU Single Window is expected to be in place in 2014.

5. There have not been any major changes to tariffs or market access generally in the EU. Although there are a large number of duty-free tariff lines and the average MFN tariff is 6.5%, some sectors, particularly agriculture, remain relatively well protected, sometimes by complex or seasonal tariffs. However, relatively few countries trade with the EU on an MFN basis as the EU has a considerable number of trade agreements with other countries as well as a GSP and GSP+, and EBA schemes.

6. Different member States charge different rates of value added tax and excise duties while corporate and personal taxation systems and rates of tax vary widely from one member State to another. The complexity of the taxation system, including collection and payment, for example for VAT, can result in additional compliance costs for economic operators while the application of reduced VAT rates for some products results in significant revenue transfers to some sectors that are typically not traded. If all reduced rates were removed, the standard rate of VAT could in certain member States theoretically be dropped by up to 7.5% without any impact on overall revenue.

7. There is little official information available at the EU level on state-owned or controlled enterprises although some sources indicate that there are several hundred among the member States. The total number may have increased over the past few years as a number of banks have been taken over by some member States in response to the financial crises. Of course, the definition of a "state-owned or controlled" enterprise is not the same as a "state-trading enterprise" in the sense of Article XVII of GATT and the Understanding on the Interpretation of Article XVII. However, many of these state-owned enterprises in the EU member States are commercial entities which have effects on trade and investment.

8. Although there are extensive data for the EU on procurement above the thresholds set out in EU law and the Government Procurement Agreement, a considerable proportion of public procurement takes place below these thresholds. It is not clear how procurement takes place below the threshold because of differences in reporting among member States, including

procurement by sub-national authorities and state-owned enterprises. This problem is not peculiar to the EU, but public procurement is a large portion of GDP in the EU and some member States have federal structures with a significant proportion of procurement taking place at sub-federal level.

9. To a large extent, SPS measures are harmonized at EU level as is EU legislation on technical requirements. However, there remain significant differences in some areas among Member states. As noted by the Commission: "Technical obstacles to the free movement of goods within the EU are still widespread." During the review period, the EU had an agreement on conformity assessment and acceptance enter into force, which not only aligns legislation on technical requirement but also foresees the possibility of mutual market access of specific products that are lawfully placed on partners' markets.

10. In the area of intellectual property rights (IPR), the EU is continuing a comprehensive process of reviewing and developing the existing body of legislation in order to move towards a coherent and balanced overall framework. For that purpose, the European Commission's "blueprint" of May 2011 to boost creativity and innovation in the EU proposed a comprehensive strategy for the modernization of the IPR regime. Among the most significant developments during the period under review is the creation of a European patent with unitary effect. It will allow future right holders to request the grant of a patent title that provides uniform protection and is automatically valid in the 25 participating member States. In parallel, a unified patent litigation system will be put in place. The EU's trademark system and copyright regime are also undergoing a major review. As part of this process, the Commission has submitted a number of legislative proposals in the field of copyright, including with respect to the collective management and multi-territorial licensing of copyright, and is reviewing the legislative framework in general. Another important step towards a more coherent regime has been made in the field of geographical indications: a unified framework has been set up to promote quality agricultural products and foodstuffs, including through denominations of origin and geographical indications. That said, the establishment of an equivalent legal framework for the protection of geographical indications for non-agricultural products continues to be under examination. Finally, the imminent adoption of the revised customs regulation aims at strengthening the enforcement of IPRs at the EU's external borders. For this purpose, its scope will be extended, some customs procedures be simplified, and further clarity will be provided as regards Customs action in relation to goods transiting the EU. Whether and what type of update of the existing legal framework for the civil enforcement of IPRs within the EU's internal market is needed continues to be subject of an extensive consultation process.

11. During the review period there was no major change in agricultural policy as implementation of the last set of reforms continued. More reform is expected to be decided in 2013 for implementation in 2014. As a result of past reforms and higher international prices for agricultural commodities, the total level of support to the agriculture sector has declined over the past few years and for most products there is now little difference between EU and international prices. However, the EU's reforms have not affected market access conditions and tariffs remain higher than on non-agricultural products and in some cases these tariffs are complex and/or seasonal.

12. Overfishing remains a serious problem for the EU as total allowable catches have regularly exceeded sustainable limits. However, for some time now the EU has been increasing the emphasis on long-term planning and more reform of the Common Fisheries Policy should take place this year.

13. On financial services, the policy objectives for reform have been fourfold: the first is the creation of a banking union through a single supervisory mechanism, a European deposit guarantee system, and a European resolution framework for banks in cases of bankruptcy; the second objective is the reform of financial institutions and markets to improve stability through the establishment of European supervisory authorities, higher capital requirements for banks and insurance companies along with specific regulations on credit rating agencies, auditors, securities markets and derivatives, and speculative trading practices that may lead to excessive market volatility; the third objective is the reinforcement of accountability in the financial system towards consumers; and the fourth is the institution of a financial services tax for some member States. These reforms have maintained third party access and developed new regulatory instruments in that regard such as the notion of equivalence.

14. For environmental services the most notable trade development is the ongoing reform of the legislative framework for concessions in order to ensure more transparency and more competition.

15. On air transport, the rules for the single aviation market are going through a "fitness check" process while other reforms on ground handling, slots, and noise are being considered and the common external aviation policy continues to be extended, particularly through the generalization of the "Community clause". On maritime transport the main developments over the review period relate to competition issues with ongoing revision of state aids and anti-trust guidelines. The third energy package, which has implications for pipeline transport, contains reinforced unbundling and third party access provisions; it entered into force in all its components starting in 2011 and finishing in 2013.

16. The EU is a highly integrated economic unit with common policies and laws for many trade-related areas. As noted, in many areas integration is increasing. The Treaty of Lisbon extended the exclusive competence under the EU common commercial policy to foreign direct investment. While the EU is in the processing of developing and implementing its investment policy, member States may maintain in force their investment agreements with third countries that were signed before the entry into force of the TFEU.

17. However, in many areas of EU competence, the member States are responsible for implementing the law and in other areas the member States have competence or share it with the EU. These areas include: monetary policy for countries outside the Euro-zone; corporate and personal taxation; and (at least to some extent) technical regulations, fiscal policy, government procurement, value added tax and excise duties. In addition, the number and importance of state-owned enterprises varies considerably from one member State to another. Overall, therefore, there are several reasons why future trade policy reviews of the EU should pay closer attention to trade-related practices in the member States, not least because they are WTO Members in their own right.

## 1 ECONOMIC ENVIRONMENT

### 1.1 Recent developments

#### 1.1.1 Macroeconomic context

1.1. In 2012, the EU's GDP stood at €12.894 trillion, making it the largest economy in the world.<sup>1</sup> Despite the on-going economic and financial crisis, trade continues to play a central role in its overall economic performance.

1.2. The EU economy started to recover in 2010, shifting from output contraction to growth. With depressed domestic demand, net exports continued to be the main driver of growth, in a context of a gradual recovery of global demand. However, growth of GDP remained subdued, with rates of 2.1% and 1.65% in 2010 and 2011, respectively. Significant disparities continued to exist among member States (Table A1.1).

1.3. In 2012, following the worsening sovereign debt crisis in some member States, and the recent slowdown in global trade, EU GDP contracted by 0.3%. Private consumption, already weak in 2011, continued to be constrained due to sluggish employee income growth and relatively high inflation rates. Increased precautionary saving by households, as a response to growing uncertainty following the resurgence of the sovereign debt crisis, has also played its part in restricting private consumption. Lower public consumption was reported in 2012, in line with on-going fiscal consolidation efforts. The increase in net exports, the main driver for GDP growth in 2011, was not sufficient to offset the depressed domestic demand.

1.4. Differences in economic performance among member States remain substantial, and weak GDP growth has been reported in the main national economies (Germany, France, and the United Kingdom). Italy's output has contracted as well as other member State economies. Diverging growth performances reflect, in particular, different constraints for the financial sector and fiscal policy. Countries hosting heavily indebted private sectors and governments are experiencing tighter credit conditions and substantial austerity measures, which put pressure on domestic demand for investment and consumption.

1.5. Over the years leading up to the economic and financial crisis, current account balances of EU member States showed diverging paths. In the euro area, the divergences were driven by large capital flows from the richer countries to the periphery, following financial integration in the euro area; as a consequence, while capital outflows reduced domestic demand in surplus countries, demand for imports of goods and services increased significantly in deficit countries (Box 1.1).

#### Box 1.1 Credit boom and macroeconomic imbalances

In general, major economic, including financial and debt, crises are preceded by a period of buoyant credit growth and low risk premium, and the euro-zone debt crisis is no exception.

During the decade leading up to the 2007-2008 global economic and financial crises, market financing grew markedly for both governments and the private sector in the euro-zone, following the convergence of yields on government bonds issued by euro-zone member States. The convergence in yields was driven to a large extent by anticipated macroeconomic stability (low and stable inflation spurred by a common monetary policy) (Chart 1.1).

Furthermore, strong GDP growth dynamics were recorded in many euro-zone countries. For example, Greece, Ireland and Spain recorded average nominal growth rates of 7% from 2003 to 2007, though, the strong growth of output recorded in those countries was accompanied by higher demand for imports which resulted in larger current account deficits. In the end, the accumulation of several years of current account deficit was translated into significant stocks of private and/or public debt. Furthermore, in some cases, the economies, and commercial banks, had become over-exposed to volatile real estate prices and unsustainable levels of construction activity.

Ultimately, the situation of low and stable inflation, together with positive output growth, nurtured a perception of low risk and high return on capital.<sup>3</sup> As their economies were growing relatively quickly and bond yields were relatively low, there was little pressure on governments to undertake fiscal reform to address fiscal deficits.

<sup>1</sup> European Commission online information. Viewed at:  
[http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search\\_database](http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database).

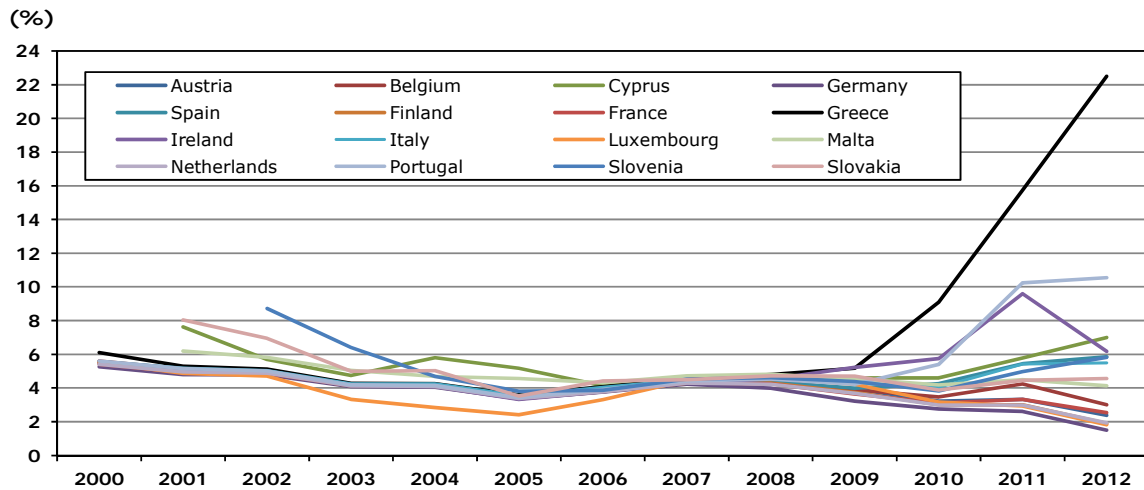
When the crisis hit the EU in 2008, economic growth fell, risk perceptions changed, and bond yields diverged. In some cases, high levels of public debt became unsustainable, in other cases, banks that were over-exposed to property-related debts had to be rescued and/or taken over by the state, leading to a significant conversion of debt from the private to the public sector. Lower tax revenues and higher unemployment exacerbated the problems.

Since 2009, rating agencies have downgraded banks and governments in some euro-zone countries, with Cyprus, Greece, Ireland, Portugal, and Spain being the most affected. As bond yields have diverged, peripheral countries (higher bond yields) are market out from those with relatively strong fundamentals (lower bond yields). In order to reassure investors' confidence, the EU has recently adopted (in addition to specific country programmes for the most affected) a number of policy measures geared at strengthening surveillance procedures (section 1.1.2).

a Economic and Financial Affairs of the European Commission (2009), *Economic Crisis in Europe: Causes, Consequences and Policy Responses*, Brussels.

Source: Gros, D. (2012), *Macroeconomic Imbalances in the Euro Area: Symptom or cause of the crisis?*, CEPS Policy Brief 2012. Viewed at: <http://www.ceps.eu/book/macroeconomic-imbalances-euro-area-symptom-or-cause-crisis>.

**Chart 1.1 Long-term government bond yields<sup>a</sup>**



a Average rates of monthly data on interest rates.

Note: No data available for Estonia.

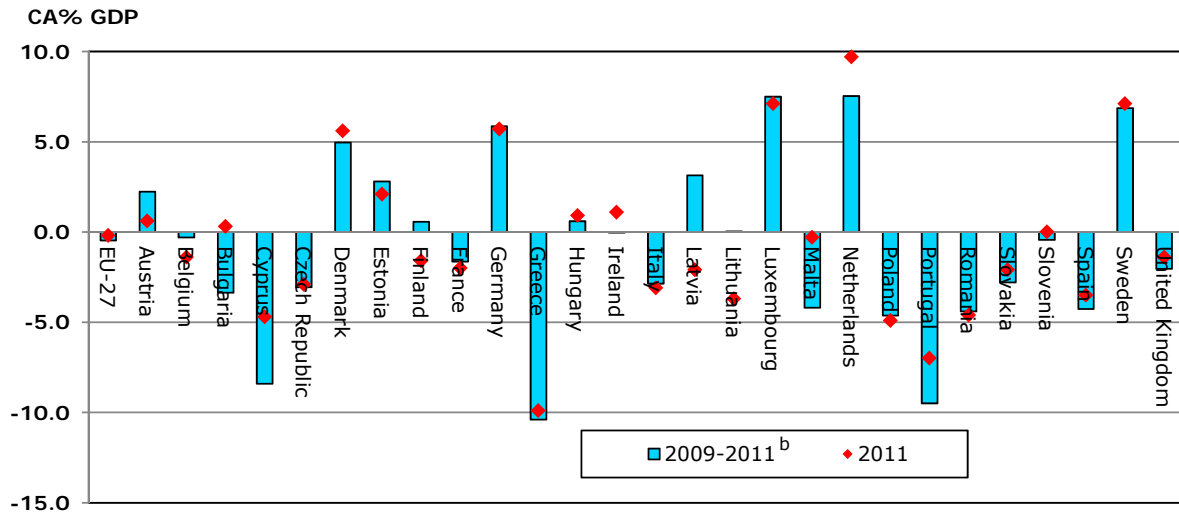
Source: European Central Bank online information. Viewed at: <http://www.ecb.int/stats/money/long/html/index.en.html#fn1> [March 2013].

1.6. Within the EU-27, external factors were additional drivers of differences in current-account balances. The net effects of factors such as stiffer competition from emerging countries, increases in commodity prices, the enlargement of the EU, and changes in the pattern of global demand, were more favourable for surplus countries' terms of trade due to their stronger competitiveness. Price competitiveness of deficit countries has suffered from the strengthening of the euro, given that their export structures are more price-sensitive. On the whole, the bulk of current-account divergences stem from the different import performances of both groups.<sup>2</sup>

1.7. The recent contraction in economic activity has reduced the divergences. On the one hand, EU countries with large current account deficits have seen a noticeable correction in their deficits, as deleveraging by the private sector has led to declining import demand. The drying up of private capital inflows to the deficit countries has also played a part in the on-going adjustment process, as well as the improvement in their competitiveness, reflected by lower real effective exchange rates and falling unit labour costs. On the other hand, member States with large current account surpluses have shown moderate increases in exports due to weaker world demand. Furthermore, domestic demand in these member States has recently improved (Chart 1.2).

<sup>2</sup> DG Economic and Financial Affairs (2012).

Chart 1.2 Balance of the current account as % of GDP<sup>a</sup>

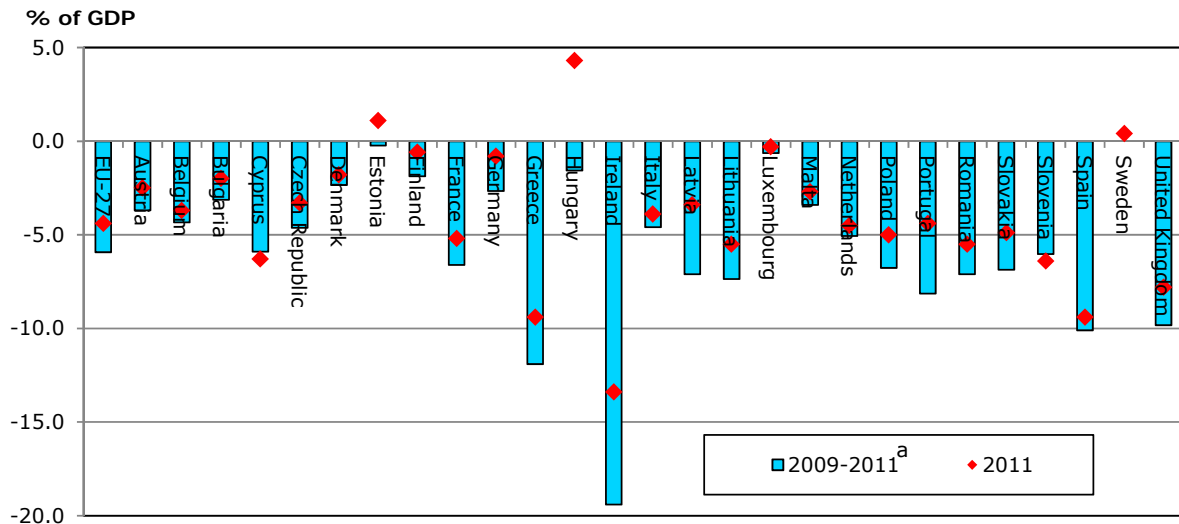


a EU-27 with the extra EU countries. Each member State with all the other countries.  
 b Simple average of three years.

Source: Eurostat online database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> [March 2013].

1.8. The slowdown of economic activity has affected fiscal balances in the EU, mainly through the fall in public revenues and the increase in automatic stabilisers through unemployment benefits. Economic stimulus plans have also affected fiscal stances in the EU. However, since 2010, public deficits have been decreasing steadily (from -6.5% of GDP in 2010 to -4.4 in 2011) (Chart 1.3), in line with fiscal consolidation measures being implemented by several member States, together with the modest recovery in public revenues.

Chart 1.3 General government balance as % of GDP



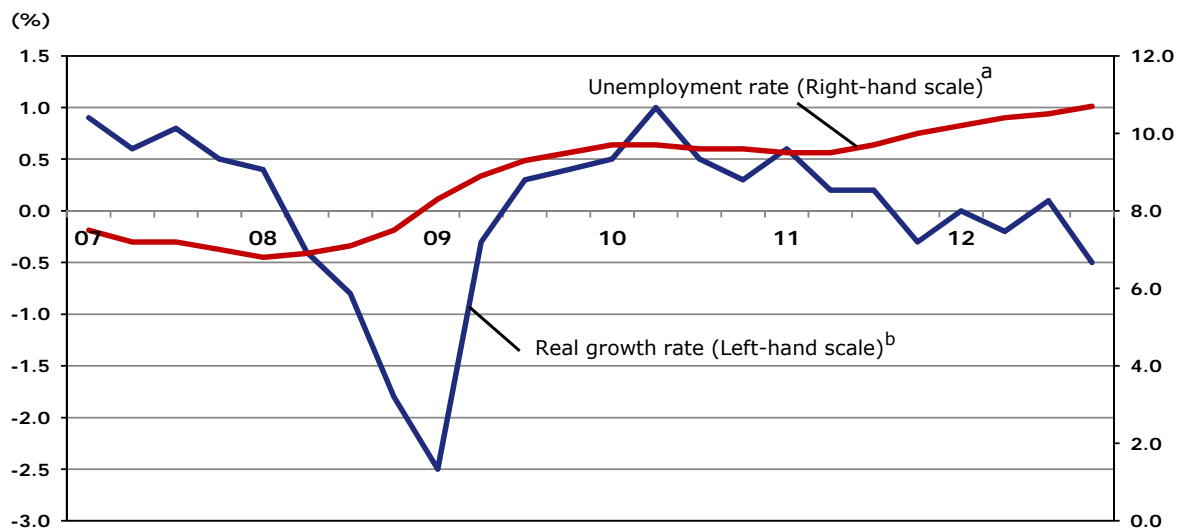
a Simple average of three years.

Source: Eurostat online database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> [February 2013].

1.9. Despite falling deficits in most of the EU member States, government debt to GDP ratios continued to increase in 2010 and 2011, but at a slower pace compared with 2009. Interest expenditures, combined with inflation and moderate GDP growth are the main drivers of public debt ratios.

1.10. Unemployment remains high, in a context of persistent cross-country differences. Low and unstable GDP performance, coupled with uncertainty driven by the escalation of the debt crisis, has been reflected in a rising unemployment rate at the EU level (Chart 1.4). Unemployment has been on a three-year upward trend, recently reaching a record high of some 26.1 million (10.5% of the EU labour force by November 2012 compared with 9.7% in 2011). The overall unemployment data conceal significant differences among member States; the increase in total EU unemployment is mainly driven by countries such as Greece, Portugal, and Spain. Different economic developments, including GDP growth and adjustment needs, have been the main determinants of cross-country disparities. Different institutional settings in national labour markets have also played a significant role in shaping labour market absorption capacities. In fact, countries with more flexible labour markets and moderate labour costs, such as Austria and Germany, registered relatively moderate unemployment between 2011 and 2012.

**Chart 1.4 Unemployment response to GDP<sup>a</sup>**



a Seasonally adjusted data.

b Seasonally adjusted and adjusted data by working days.

Source: Eurostat online database. Viewed at <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> [March 2013].

1.11. From 2011 to 2012, consumer price inflation continued to be determined by increases in indirect taxation rates in several EU countries. Furthermore, rising food and oil prices and the pass-through from the recent depreciation of the euro (in the euro area) have contributed to relatively high inflation. In addition, in spite of a limited rise of labour costs on the back of high unemployment, and a moderate consumption growth, producer price inflation has been strong (2.7% in 2012), due to the effect of higher energy prices.

### 1.1.2 Policy measures

1.12. A wide range of policy decisions, including a further strengthening of institutional settings, additional structural reforms, and exceptional monetary support in the euro area, have been adopted in the EU.

1.13. In 2010, the Commission rolled out its growth strategy, "Europe 2020", for the coming decade. In the context of this strategy, five objectives (concerning employment, innovation, education, social inclusion and climate/energy) were set to be reached by 2020. Each member State has adopted its own national targets in each of these areas.

1.14. In 2011 and 2012, the European Central Bank provided large-scale liquidity injection through the Eurosystem's three-year longer-term refinancing operations (LTROs), which contributed significantly to averting a more pronounced credit crunch in the euro-area banking sector. In addition, the ECB's decision to undertake Outright Monetary Transactions (OMTs) in the

secondary market of sovereign bonds in the euro area has also contributed to avoiding turbulence in the markets.

1.15. As part of policy decisions aimed at improving economic governance in the EU, in September 2011, the European Commission presented six legislative proposals on strengthening macroeconomic and fiscal surveillance. On 13 December 2011, these six proposals (six-pack) entered into force as five regulations and one directive. Two of the regulations established the Macroeconomic Imbalance Procedure (MIP). It introduced a new surveillance mechanism aimed at preventing and correcting macroeconomic imbalances at the European level with surveillance starting from a scoreboard of eleven indicators. The scoreboard is published in the Alert Mechanism Report (AMR). For each indicator, alert thresholds have been defined to detect potential imbalances (Table 1.1). In addition, quantitative and qualitative information is taken into account to identify countries and issues for which an in-depth review is deemed necessary. However, the composition of the scoreboard may evolve over time. Through the Excessive Imbalance Procedure (EIP) corrective measures may be taken against a country in the euro area if it experiences excessive imbalances in the sense of the MIP regulation.<sup>3</sup>

**Table 1.1 Scoreboard for the surveillance of macroeconomic imbalances**

Indicator	Accepted range (%)
Current account balance (3-year moving average, % of GDP)	Between -4 and 6
Net international investment position (% of GDP)	> -35
World export share (in current value, 5-year % change)	> -6
Real effective exchange rate ( <i>vis-à-vis</i> 35 industrial countries, based on consumer-price indices, 3-year % change)	-/+ 5 (euro area) -/+ 11 (non-euro area)
Nominal unit labour cost (3-year % change)	< 9 (euro area) < 12 (non-euro area)
Private sector debt (% of GDP)	< 160
Private sector credit flow (% of GDP)	< 15
House prices relative to consumer prices (year-on-year changes, in %)	< 60
General government debt (% of GDP)	< 60
Unemployment rate (3-year moving average, in %)	< 10

Source: European Commission (2012), *Scoreboard for the surveillance of macroeconomic imbalances*, Occasion Paper No. 92, February. Viewed at: [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2012/pdf/ocp92\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp92_en.pdf); and Bénassy-Quéré, A., L. Nayman, and S. Piton (2012), "Six pack: the case for a simplified scoreboard", *Le Blog du CEPII*, 14 November. Viewed at: <http://www.cepii.fr/BLOG/en/post.asp?IDcommuniqu=162>.

1.16. In February 2012, the Commission presented its first "Alert Mechanism Report" (AMR) which identified 12 member States needing further economic analysis in order to determine whether macroeconomic imbalances existed or risked emerging (Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Italy, Hungary, Slovenia, Spain, Sweden, and the United Kingdom). Further analysis confirmed that these 12 member States faced macroeconomic imbalances of different natures. The Commission considered that Spain and Cyprus were experiencing "very serious" imbalances, while the imbalances of France, Hungary, Italy, and Slovenia were considered "serious". None of these imbalances were deemed "excessive" in the sense of the procedure, but they all needed to be closely monitored. During the second AMR in November 2012, Malta and the Netherlands were added to the list.

1.17. On its fiscal component, the six-pack addresses the weaknesses identified in the Stability and Growth Pact (SGP), by strengthening both its fiscal surveillance and enforcement provisions. In fact, it ensures stricter application of the fiscal rules under the SGP by defining quantitatively what a "significant deviation" (from the medium-term Objectives or the adjustment path towards it) means in the context of the preventive arm; and by introducing an early and gradual system of financial sanctions for euro-area Member States, and requiring new minimum standards for national budgetary frameworks.

1.18. In response to the worsening employment situation in the EU, a number of initiatives have been taken. In April 2012, the Commission presented an "employment package", in order to

<sup>3</sup> European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/economic\\_governance/macro-economic\\_imbalance\\_procedure/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/macro-economic_imbalance_procedure/index_en.htm).



improve, *inter alia*, the demand side of job creation in sectors with sustainable employment potential, and the dynamics in member States' labour markets; it also aims at strengthening EU employment governance. In addition, in February 2013 a "social investment package" was presented, calling on member States to prioritise social investment and modernise their welfare states. Specific measures targeting youth employment have also been adopted. As an example, in February 2013, political agreement was reached between member States on a Council Recommendation to establish guaranteed youth schemes.

## 1.2 Outlook

1.19. Based on the conclusions of the winter edition of the European Economic Forecast, conditional on the implementation of recent policy measures at the EU and national level, the EU economy is projected to stabilise in 2013, before picking up in 2014. Policy actions in the United States and some emerging economies are expected to play a part in economic activity recovery.<sup>4</sup>

1.20. In 2013, domestic demand will continue to make a negative contribution to GDP growth as disposable income continues to suffer from a further contraction of employment, low real wages growth and higher taxes. In addition households' precautionary savings are not expected to decrease, and ongoing fiscal consolidation will further constrain domestic demand. In this context of constrained private consumption, net exports are expected to remain the main positive contributor to GDP growth in the EU, supported by a reaccelerating global demand, combined with the depreciation in the nominal exchange rate in 2012, and falling unit labour costs. Overall, the EU economy is expected to register subdued annual growth in 2013 (0.1%).

1.21. By 2014, domestic demand is expected to take over as the main driver of GDP growth, as most of the headwinds are expected to abate. Improving consumer confidence, together with rising real disposable incomes and slowly improving labour market conditions are set to boost household consumption, while the initial effects of reforms on financing conditions for the private sector in vulnerable countries are expected to invigorate investment demand.

1.22. Unemployment rates are likely to remain high in 2013 and 2014. However, the modest recovery, combined with the return of confidence is set to stabilise labour markets in 2013, before a weak increase in employment in 2014.

1.23. Inflation in the EU will decrease gradually in 2013 and 2014. The average inflation rate is set to decline to 2.0% in 2013 and to 1.7% in 2014. A moderate rise in labour costs and falling commodity prices are forecast to be the main determinants of declining inflation. In addition, the relative recovery in GDP growth is not expected to generate further inflationary pressures. As a result, GDP is expected to grow by 1.6%

1.24. General government deficits are also expected to decrease in the short-term, following increased government revenues, as a result of higher tax rates and a wider tax basis. The deficit in the EU is projected to decline to 3.4% of GDP in 2013 and to 3.1% in 2014. However, public debts, as a percentage of GDP, will continue to increase, influenced by interest expenditure, moderate GDP growth and inflation.

1.25. Nevertheless, the rather positive outlook remains exposed to downside risks, such as the persistence of pools of vulnerability in financial markets, and the possible moderation of GDP growth in China and other emerging economies.

## 1.3 Merchandise Trade

1.26. Since 2009, the EU's merchandise trade with the rest of the world continues to grow. Both imports and exports have recovered from the 2008 negative performance.

1.27. The EU's trade deficit is driven mainly by the large deficit in trade of fuel products, which has continued to widen from €241 billion in 2009 to €422 billion in 2012. However, this has been partly offset by trade surpluses in machinery and transport equipment, together with chemicals.

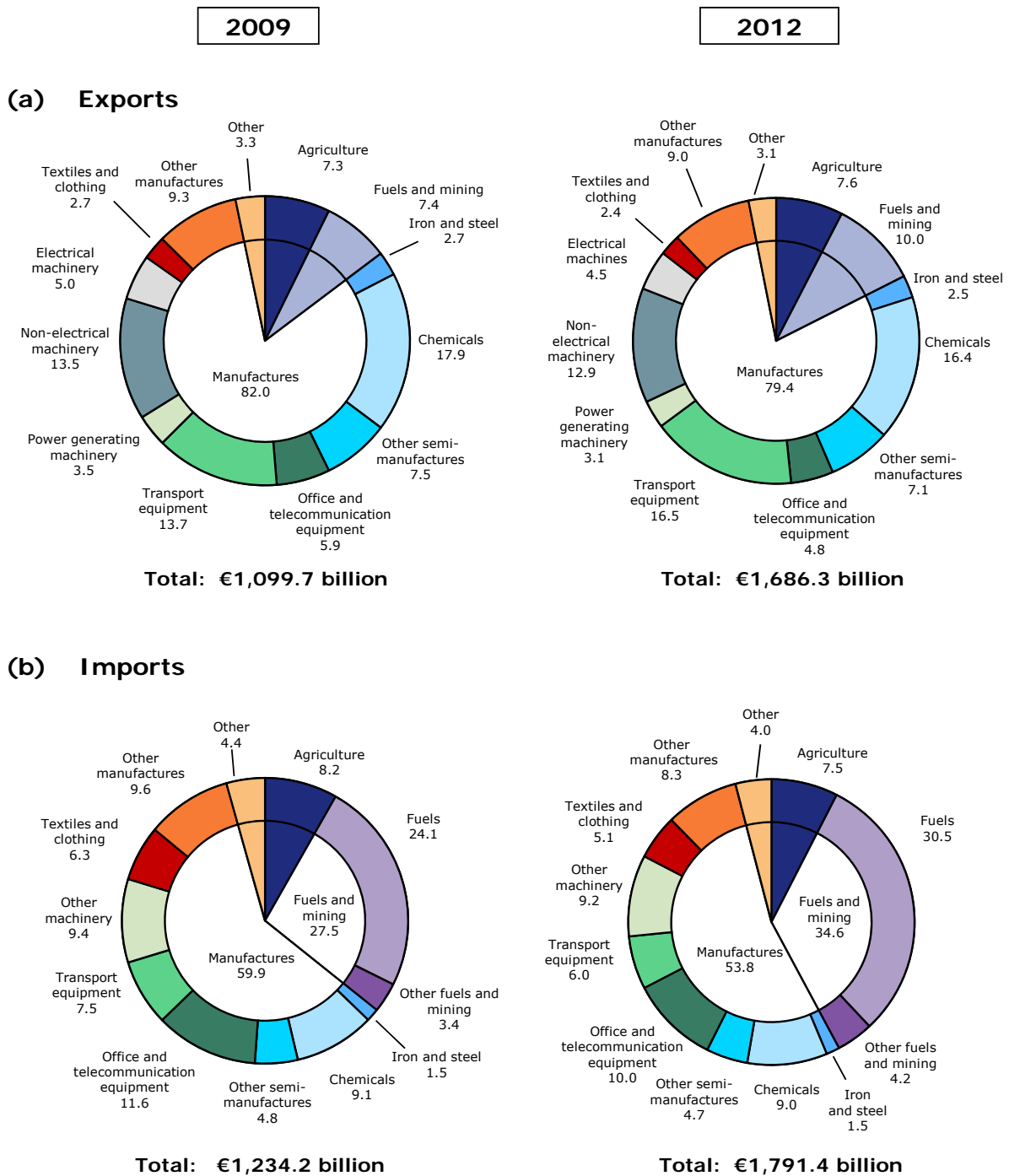
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<sup>4</sup> European Commission, DG Economic and Financial Affairs online information. Viewed at: [http://ec.europa.eu/economy\\_finance/publications/european\\_economy/2013/pdf/ee1\\_en.pdf](http://ec.europa.eu/economy_finance/publications/european_economy/2013/pdf/ee1_en.pdf).

1.28. Fuel products are the most buoyant import category of the EU. Rising fuel bills have contributed to increased import values since 2009. In 2011 and 2012, fuel products became the main import category before machinery and transport equipment, following the rapid increase in their import value (Chart 1.5 and Table AI.2). Between 2009 and 2012, the import value of fuel products increased by 83% to €546 billion, while that of machinery and transport equipment increased by 28% to €452 billion.

**Chart 1.5 Composition of merchandise trade, 2009 and 2012**

(%)



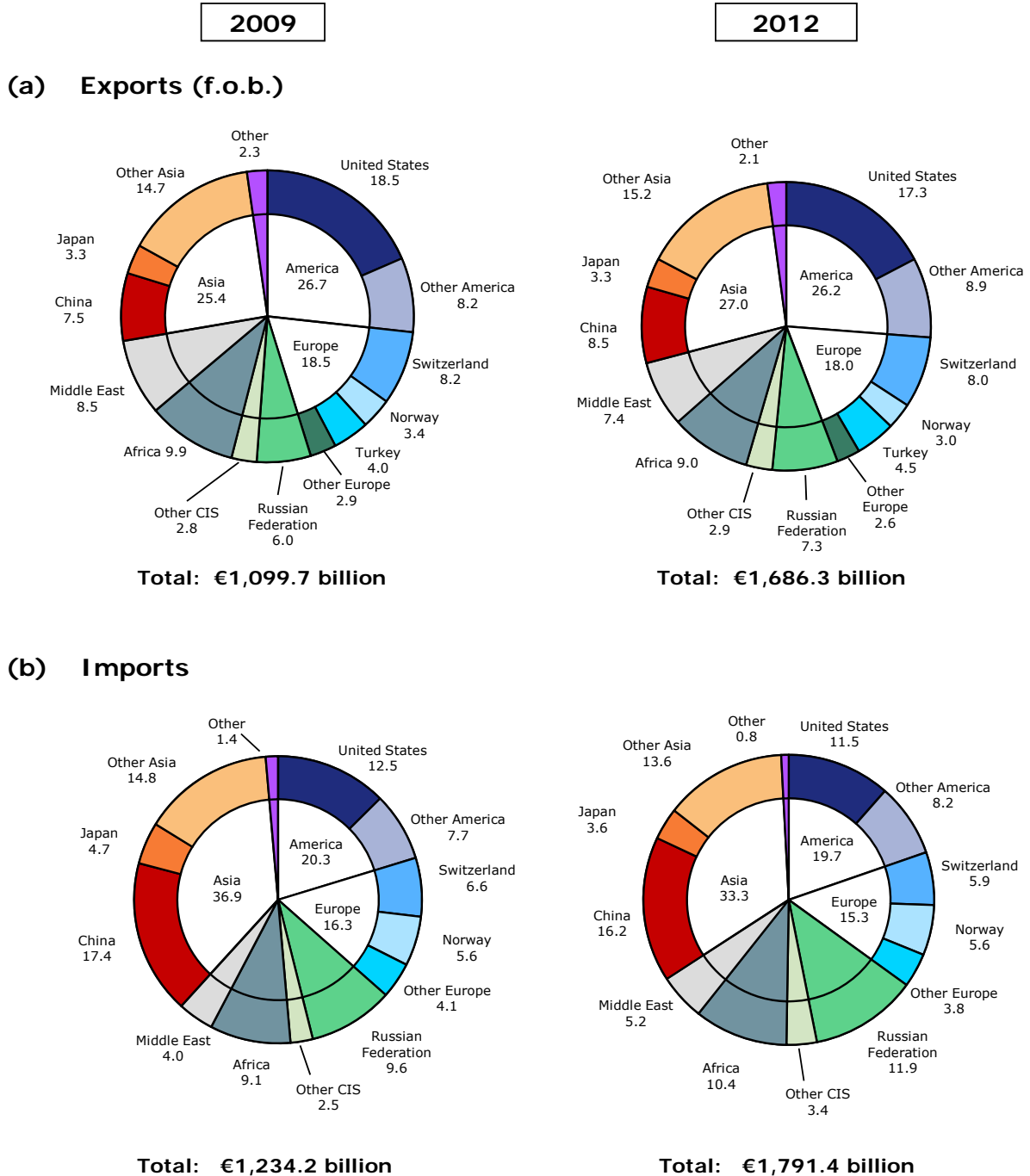
Source: Information provided by the European Commission (SITC Rev.4).

1.29. China was the EU's largest source of imports in 2012 (with 16.2% of market share), followed by Russia (11.9%), and the United States (11.5%) (Chart 1.6 and Table AI.3). Except for

Russia, the main import countries continue to register decreases in their import share into the EU. This is happening to the benefit of non-traditional partners in both Africa and America.

**Chart 1.6 Direction of merchandise trade, 2009 and 2012**

(%)



Source: WTO Secretariat calculations, based on Eurostat data; and information provided by the European Commission.

1.30. Exports have been increasing since 2009. The recovery was driven mostly by increased exports of machinery and transport equipment, with over 40% of total EU exports (Chart 1.5 and Table A1.4). Almost all export categories registered a positive performance between 2009 and 2012.

1.31. The United States remains the most important destination for EU exports (17.3% of EU exports in 2012), although its share has been decreasing since 2009 (when it stood at 18.5%). China surpassed Switzerland to become the second export destination in 2012. On broad geographical destinations, Asia is the most important, with 27% of total exports in 2012, closely followed by America, with 26.2% in the same year (Chart 1.6 and Table AI.5).

1.32. Some two thirds of the EU's total trade takes place within the EU (Box 1.2). The proportion varies considerably across member States. In 2011, the highest shares of intra-EU trade (about 80%) were recorded for Luxembourg, the Czech Republic and Slovakia, with this ratio falling to 51.2% in Greece and 49.4% in the United Kingdom.<sup>5</sup>

### Box 1.2 Export performance in the EU

The EU-27 is the largest trading entity in the world. In 2012, manufactured goods represented some 80% of its goods exports by value. The sector also provides employment to over 33 million people.

Exports of goods from the EU (as a single trading entity) have continued to perform positively during the last decade, and recovered rapidly from the sharp drop between 2008 and 2009 in the middle of the global economic crisis. However, despite the increase in the value of exports from the EU, the growth rate has actually been lower than that of world total exports and, as a result, the EU's share in the global export market has declined markedly over the last decade, denoting a deteriorating competitiveness *vis-à-vis* its main trading partners (Chart 1.7).

Export performance varies considerably among member States. While exports from some, including Germany, Netherland and Austria, have continuously increased at a relatively fast pace (except for the drop between 2008 and 2009), export growth in some other member States, mainly the southern European countries, has been modest (Chart 1.8). Arguably, these figures point to a substantial export market share loss in these countries.

The weak increase in exports of some member States tends to reflect unfavourable competitiveness figures. Looking at their price competitiveness factors, for example, wage growth has continuously outstripped productivity gains; and as a result, unit labour costs and real effective exchange rate (REER) have risen significantly. Figures also show that the good performance of Germany in reining in its productivity-adjusted wages stems from, among other factors, a well-tuned labour policy. Since 2000, unit labour costs have increased only by 5% in Germany<sup>a</sup>, while they have risen by between 25% and 35% in other member States in the Eurozone.<sup>b</sup>

In addition, the diversity in economic structures within the EU has also contributed to diverging export performance profiles; and the global economic and financial crisis has exacerbated these differences.

The limited success of most southern European countries in taking advantage of the increasing volume of world trade reveals their constrained flexibility to tap the opportunities offered by changing global trade patterns. They have registered slower geographical, sectoral, and technological diversification in order to redirect their exports to fast-growing markets or towards products with higher value added, reflecting their weaker national mechanisms for, *inter alia*, resources deployment across sectors, and innovation and quality upgrading.

On a different note, the good performance of the research and innovation systems, and the friendly business environment characterized by access to finance and good infrastructure in Germany, have enhanced productivity in their enterprises and prompted the move toward higher value products.<sup>c</sup>

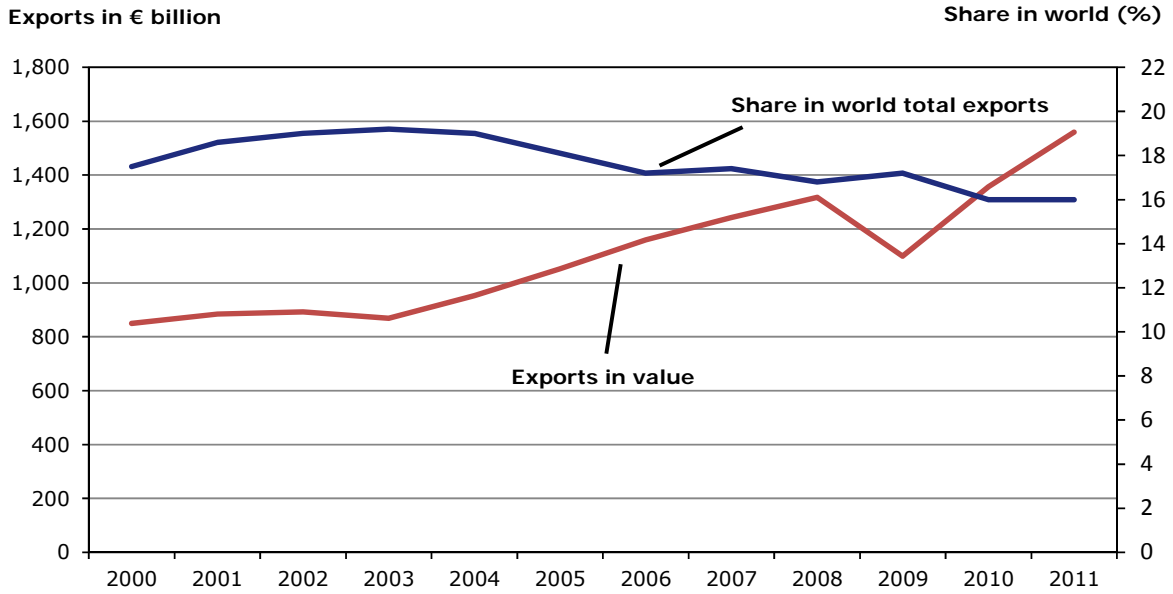
The EU is the main export market for its member States. In 2010, intra-EU exports of goods accounted for 64% of total exports. This was far larger than the level recorded for extra-EU exports. Much as this might suggest strong regional integration, it is also the evidence of weak export dynamics towards the fast growing economies of Asia and Latin America.

- a Unit labour cost is one of the competitiveness indicators in the Commission's Scoreboard for the surveillance of macroeconomic imbalances.
- b Eurostat online database. Viewed at <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>.
- c European Commission (2012), *Member States' Competitiveness Performance and Policies and Industrial Performance Scoreboard*. Viewed at: [http://ec.europa.eu/enterprise/policies/industrial-competitiveness/monitoring-member-states/files/ms\\_comp\\_report\\_2012\\_en.pdf](http://ec.europa.eu/enterprise/policies/industrial-competitiveness/monitoring-member-states/files/ms_comp_report_2012_en.pdf).

Source: WTO Secretariat.

<sup>5</sup> Eurostat online information. Viewed at [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/International\\_trade\\_in\\_goods#Further\\_Eurostat\\_information](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/International_trade_in_goods#Further_Eurostat_information).

**Chart 1.7 EU exports and share in world total exports<sup>a</sup>**

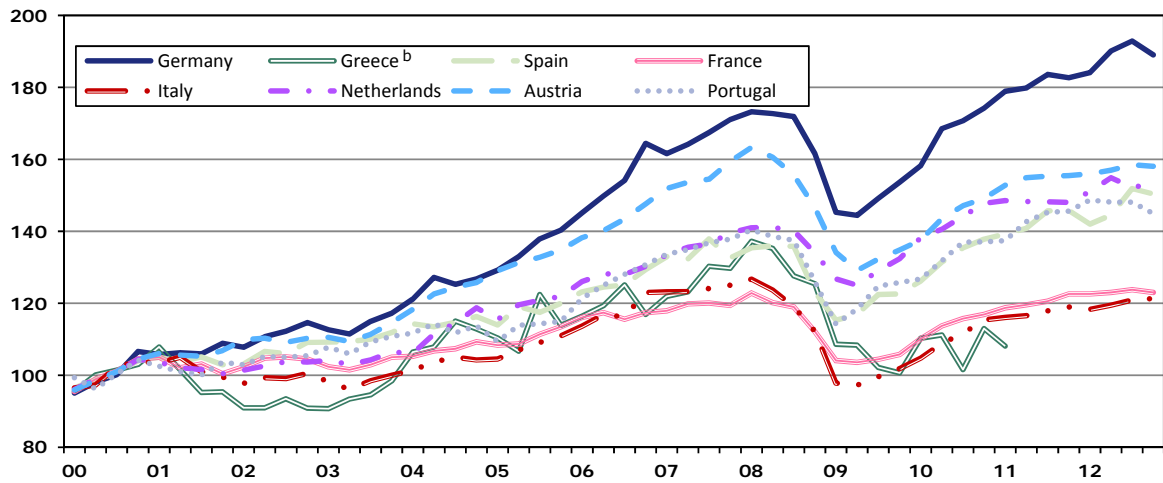


a Extra-EU-27 exports.

Source: Eurostat online database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> [March 2013].

**Chart 1.8 Selected EU nations, export volumes of goods and services<sup>a</sup>**

(Indices, 2000=100)



a Including intra-EU exports. Seasonally adjusted and adjusted data by working days.

b Provisional data for Greece. Data are available up to 2011 Q1.

Source: Eurostat online database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> [March 2013].

**1.4 Services Trade**

1.33. Both services imports and exports increased in 2010 and 2011 while the surplus in services trade also increased, from €83 billion in 2009 to €121 billion in 2011. "Other business services" is the largest category of export services with 30%, followed by transportation (22%), travel (14%), and financial services (8%) (Table 1.2). Exports of transportation services increased by nearly 1 percentage point, whereas other business, government, insurance, services exports declined. Imports of transportation services showed the biggest increase in absolute terms, by nearly 3 percentage points and second biggest in relative terms (after financial services, which increased by 20%).

**Table 1.2 Trade in services, 2009-11**

(€ billion and %)

	EU-27 exports			EU-27 imports		
	2009	2010	2011	2009	2010	2011
<b>Total (€ billion)</b>	<b>512.2</b>	<b>566.6</b>	<b>603.9</b>	<b>429.1</b>	<b>463.6</b>	<b>482.9</b>
	% of total services exports			% of total services imports		
Transportation	21.5	23.2	22.4	21.0	23.8	23.7
Travel	13.5	13.5	14.2	20.0	19.4	18.9
Other services	64.9	63.3	63.4	56.0	53.8	54.6
Communications services	2.5	2.8	2.9	3.1	3.2	3.2
Construction services	3.8	3.3	3.2	2.3	1.7	1.7
Insurance services	4.4	4.0	3.0	2.5	2.4	2.3
Financial services	8.4	8.4	8.4	3.7	4.0	4.5
Computer and information services	6.4	6.7	6.8	3.2	3.2	3.0
Royalties and license fees	5.8	6.0	6.4	9.9	9.6	9.4
Other business services	31.1	29.8	30.3	28.3	26.8	27.9
Personal, cultural, and recreational services	1.0	1.1	1.1	1.2	1.3	1.2
Government, n.i.e.	1.5	1.3	1.2	1.7	1.6	1.3
Branding, quasi-transit adjustment	0.0	0.0	0.0	3.0	2.9	2.8
Services not allocated	0.1	0.1	0.0	0.1	0.1	0.1
<b>Selected trading partners</b>						
EFTA	17.1	16.5	16.9	14.2	13.9	13.9
Switzerland	13.4	13.1	13.3	11.5	11.4	11.3
Russia	3.7	4.2	4.0	2.7	3.0	3.0
Turkey	1.3	1.5	1.6	2.7	3.0	3.1
Africa	8.0	7.4	7.5	7.9	7.9	6.7
Egypt	0.6	0.5	0.5	1.5	1.5	1.1
South Africa	1.2	1.2	1.2	1.0	1.0	0.9
Morocco	0.6	0.5	0.6	0.9	0.9	0.8
Nigeria	0.8	0.7	0.9	0.4	0.4	0.4
America	35.6	35.3	34.9	41.2	40.2	39.9
United States	25.0	24.5	24.1	30.4	29.3	29.0
Canada	2.4	2.6	2.6	1.9	2.1	2.1
Brazil	1.9	1.7	1.9	1.4	1.4	1.5
Mexico	0.9	1.0	1.0	0.6	0.7	0.7
Asia	24.3	25.1	25.2	20.9	22.0	22.7
China (except Hong Kong, China)	3.7	4.2	4.3	3.3	3.7	3.8
Japan	3.6	3.5	3.6	3.1	3.3	3.3
Singapore	2.3	2.4	2.7	1.9	2.1	2.4
India	1.8	1.9	1.9	1.8	2.0	2.2
Hong Kong, China	1.5	1.6	1.6	1.6	1.6	1.7
Thailand	0.5	0.4	0.4	1.1	1.0	1.0
Republic of Korea	1.3	1.5	1.5	0.9	1.0	0.9
Australia	2.5	2.7	2.6	1.4	1.5	1.5

Source: Eurostat.

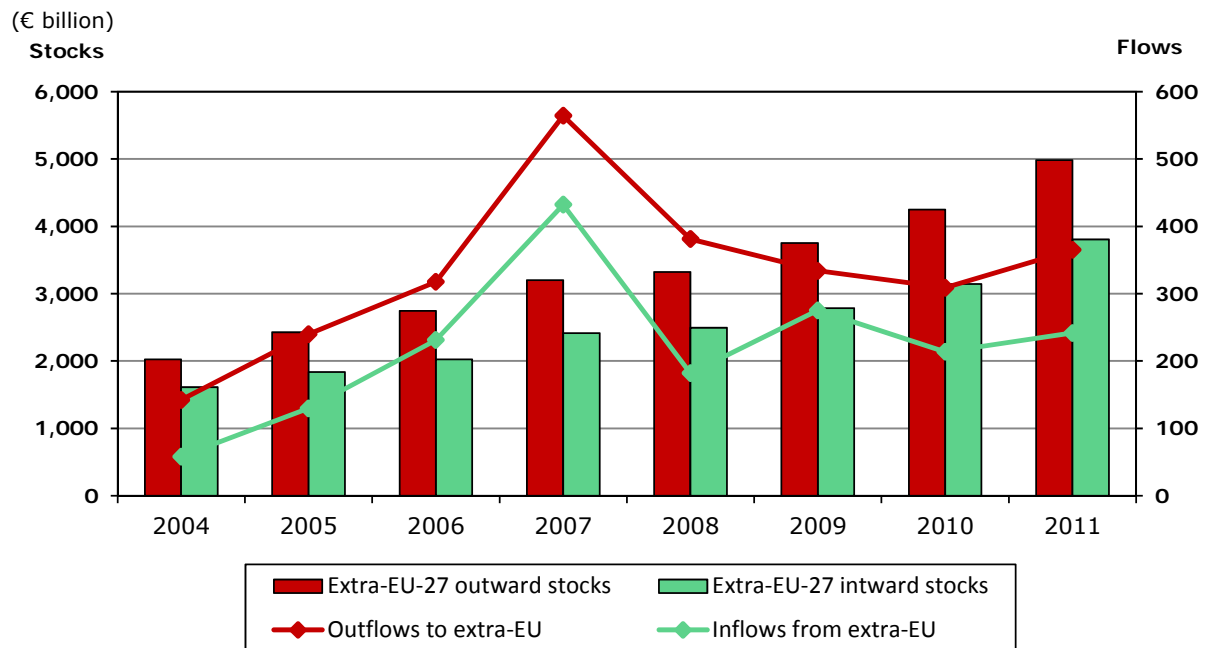
1.34. The United States remains the largest export (24%) and import (29%) partner of the EU, though its share in both has been declining since 2000. Switzerland remains the second largest importer and exporter of services.

### 1.5 Foreign Direct Investment (FDI)

1.35. The EU continues to be the world's largest recipient and supplier of FDI. In addition, it continues to be a net investor in the rest of the world. Both stocks held by the EU and those held by the rest of the world have risen steadily during the last years (Chart 1.9); however the trend of flows reflected the impact of the financial turmoil.

1.36. After a significant decrease in its outward and inward flows between 2007 and 2009, there was some increase in 2011, although below the record peaks of 2007 (Table 1.3). The United States, Switzerland, Canada, and Brazil are the main partners, with Brazil increasingly becoming an important destination for EU investors, as outflows to Brazil tripled from 2008 to 2011.

Chart 1.9 FDI flows and stocks, 2004-11



Source: Eurostat online database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> [March 2013].

Table 1.3 Distribution of FDI stocks, 2005 and 2009-11

(€ billion and %)

	Outward stock				Share 2011 (%)
	2005	2009	2010	2011	
World	6,305.1	9,589.7	10,590.7	11,920.0	100.0
Intra EU-27	3,878.9	5,838.7	6,343.8	6,936.6	58.2
Extra EU-27	2,426.2	3,751.0	4,247.0	4,983.5	41.8
<b>Major partners</b>					
United States	844.6	1,204.7	1,275.1	1,421.0	11.9
EFTA	350.4	582.3	639.4	697.3	5.9
Switzerland	309.7	518.5	543.8	598.2	5.0
Norway	38.7	61.5	91.9	94.9	0.8
Brazil	74.1	139.7	200.2	238.9	2.0
Canada	94.3	166.2	196.9	221.6	1.9
Russia	32.9	99.1	130.6	166.8	1.4
Australia	53.9	81.2	118.9	124.9	1.0
Hong Kong, China	87.3	90.2	110.9	124.0	1.0
Singapore	49.2	95.6	110.1	122.8	1.0
China <sup>a</sup>	27.5	63.9	79.9	101.5	0.9
Japan	90.3	81.8	88.3	85.8	0.7
South Africa	47.2	72.2	75.6	79.5	0.7
Mexico	42.5	61.0	75.1	76.7	0.6
Turkey	23.5	52.5	63.5	73.5	0.6
India	10.6	27.4	34.8	46.4	0.4
Argentina	38.0	41.7	48.1	44.3	0.4
Republic of Korea	28.5	30.0	36.8	39.1	0.3
Nigeria	14.6	27.8	28.5	32.4	0.3
Indonesia	11.2	17.5	20.9	27.0	0.2
Egypt	8.3	23.4	25.2	26.3	0.2
Chile	18.2	19.5	24.9	25.0	0.2
Bolivarian Republic of Venezuela	9.4	16.3	18.9	24.8	0.2
Malaysia	8.0	13.3	21.9	24.0	0.2



	Outward stock				
	2005	2009	2010	2011	Share 2011 (%)
Ukraine	7.8	13.2	22.8	23.7	0.2
Croatia	8.2	16.8	20.1	21.5	0.2
Colombia	7.2	13.0	14.8	12.7	0.1
Uruguay	3.4	5.3	6.4	6.9	0.1
Israel	3.6	5.7	5.0	6.4	0.1

	Inward stock				
	2005	2009	2010	2011	Share 2011 (%)
World	5,690.7	8,507.1	9,168.1	10,119.7	100.0
Intra EU-27	3,855.6	5,723.7	6,025.3	6,312.9	62.4
Extra EU-27	1,835.1	2,783.3	3,142.8	3,806.8	37.6
<b>Major partners</b>					
United States	874.8	1,089.7	1,240.0	1,344.2	13.3
EFTA	304.0	418.3	476.7	555.5	5.5
Switzerland	245.6	340.0	395.9	467.3	4.6
Norway	45.4	64.4	68.2	74.6	0.7
Brazil	8.1	63.9	85.2	77.8	0.8
Canada	76.2	125.0	144.0	137.6	1.4
Russia	12.1	46.9	50.6	53.1	0.5
Australia	22.7	30.2	29.5	34.3	0.3
Hong Kong, China	16.8	27.5	41.5	63.9	0.6
Singapore	28.5	50.1	60.3	67.3	0.7
China <sup>a</sup>	1.2	5.9	6.4	15.0	0.1
Japan	78.2	126.8	132.2	144.2	1.4
South Africa	4.3	8.2	9.1	8.1	0.1
Mexico	9.1	16.8	20.2	20.4	0.2
Turkey	6.9	7.5	8.2	8.9	0.1
India	2.5	5.5	7.3	10.1	0.1
Argentina	2.0	-0.3	-1.5	2.5	0.0
Republic of Korea	6.2	10.9	12.7	11.2	0.1
Nigeria	2.8	5.4	7.5	7.0	0.1
Indonesia	-2.6	-2.6	-2.2	-2.5	0.0
Egypt	0.6	5.5	2.8	2.7	0.0
Chile	0.8	3.6	1.4	2.1	0.0
Bolivarian Republic of Venezuela	2.0	3.5	4.0	8.2	0.1
Malaysia	1.7	3.7	4.2	4.1	0.0
Ukraine	0.4	2.7	1.5	2.0	0.0
Croatia	0.6	0.7	1.2	0.8	0.0
Colombia	0.3	1.9	1.8	2.2	0.0
Uruguay	0.8	4.2	2.7	2.9	0.0
Israel	5.7	20.3	25.4	28.1	0.3

a Except Hong Kong, China.

Source: WTO Secretariat, based on Eurostat online database, "EU direct investments: main indicators (bop\_fdi\_main)". Viewed at: [http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search\\_database](http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database) [March 2013].

1.37. Between 2009 and 2010, the stock of outward FDI increased by about €1,000 billion (including intra EU). Intra-EU investments accounted for about 60% of the total. While the United States continues to hold the biggest share of outward stocks of FDI (11%), EFTA countries (Switzerland and Norway) are also important partners.

1.38. In 2010, the United States accounted for over 40% of the EU's inward stocks of FDI from the rest of the world (extra-EU). Most US investments were made in financial and insurance



activities and manufacturing (one third of the latter being in metal and machinery manufacturing).<sup>6</sup>

1.39. Other countries with significant shares of inward FDI stocks in the EU-27 included Canada; Japan; Brazil; Singapore; Hong Kong, China; and Russia. Canada and Japan held 15% and 4% more FDI stocks respectively in 2010 compared with the previous year. In 2010, the highest annual growth among these partners was achieved by Hong Kong, China (51%), followed by Brazil (34%) and Singapore (21%).

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<sup>6</sup> Eurostat online information. Viewed at:  
[http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Foreign\\_direct\\_investment\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Foreign_direct_investment_statistics).

## 2 TRADE AND INVESTMENT REGIME

### 2.1 Legal and Institutional Framework

2.1. There have been no major changes to the legal and institutional framework for trade and investment policies in the European Union (EU) since the Treaty on the Functioning of the European Union (TFEU, also known as the Lisbon Treaty) came into effect in December 2009. The Lisbon Treaty clarifies the division of competences between the EU and its member States, and "draws up a non-exhaustive list of fields concerned in each case" (Table 2.1).<sup>1</sup>

**Table 2.1 Competences of the EU**

	<b>Definition</b>	<b>Field</b>
<b>Exclusive competence</b> (TFEU, Article 3)	Only the EU is able to legislate and adopt binding acts. The member States' role is limited to applying these acts, unless the Union authorizes them to adopt certain acts themselves	<ul style="list-style-type: none"> <li>• Customs union</li> <li>• Common commercial policy</li> <li>• Agriculture and fisheries only for conservation of resources</li> <li>• Competition (establishing rules necessary for the functioning of the internal market)</li> <li>• International agreements</li> <li>• Monetary policy (for those members whose currency is the euro)</li> </ul>
<b>Shared competence</b> (TFEU, Article 4)	The EU and the member States may adopt binding acts. However, the member States may do so only if the EU has not exercised its competence or has decided not to	<ul style="list-style-type: none"> <li>• Agriculture and fisheries (except for conservation of resources)</li> <li>• Internal market</li> <li>• Consumer protection (including technical regulations, sanitary and phytosanitary issues)</li> <li>• Development cooperation and humanitarian aid</li> <li>• Economic, social, and territorial cohesion</li> <li>• Energy</li> <li>• Environment</li> <li>• Freedom, security, and justice</li> <li>• Public health</li> <li>• Research, technological development, and space</li> <li>• Social policy</li> <li>• Transport</li> <li>• Trans-European networks</li> </ul>
<b>Supporting competence</b> (TFEU, Article 6)	The EU may only intervene to support, coordinate or complement the action of Member states. Therefore, it has no legislative power and may not interfere in the exercise of these competences reserved for member States	<ul style="list-style-type: none"> <li>• Administrative cooperation</li> <li>• Civil protection</li> <li>• Culture</li> <li>• Education, vocational training, youth, and sport</li> <li>• Human health</li> <li>• Industry</li> <li>• Tourism</li> </ul>
<b>Coordination competence</b> (TFEU, Article 5)	The EU may adopt broad guidelines to be followed by member States to ensure coordination of their policies within the Union	<ul style="list-style-type: none"> <li>• Economic policy</li> <li>• Employment policy</li> <li>• Social policy</li> </ul>

<sup>1</sup> European Union online information, "Division of competences within the European Union". Viewed at: [http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/lisbon\\_treaty/ai0020\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0020_en.htm) [14.03.13].

	Definition	Field
<b>Other competence</b> Treaty on EU, Article 24	The EU has competence in all fields connected with the Common Foreign and Security Policy (CFSP). However, the EU may not adopt legislative acts in this field. In addition, the Court of Justice of the EU does not have competence to give judgment in this area	<ul style="list-style-type: none"> <li>• Common foreign and security policy</li> </ul>
TFEU, Article 352	The "flexibility clause" enables the EU to act beyond the power of action conferred upon it by the Treaties if the objective pursued so requires. However, this clause is framed by a strict procedure and by certain restrictions in terms of its application.	

Source: Europa online information. Viewed at: [http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/lisbon\\_treaty/ai0020\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0020_en.htm); and European Commission's European citizens' initiative online information. Viewed at: <http://ec.europa.eu/citizens-initiative/public/competences/faq>.

2.2. The EU's trade and trade-related policies are formulated and implemented by means of two types of legislation:

- primary legislation, such as treaties and other agreements of similar status, where the EU concludes and implements the Common Commercial Policy (CCP); and
- secondary legislation (Table A2.1)<sup>2</sup>, such as:
  - regulations (with general application) that are binding and directly applicable to all member States;<sup>3</sup>
  - directives that require transposition into national law and practice;
  - decisions that are binding on those addressed in the decision; and
  - recommendations and opinions, that are based on primary legislation but are not legally binding.

2.3. Under the Lisbon Treaty, the EU has exclusive competence, *inter alia*, for trade and investment policies and member States may develop legal acts in these areas only when authorized by the EU. The scope of common commercial policy covers trade in goods, trade in services, trade aspects of intellectual property rights, foreign direct investment, and trade defence measures.<sup>4</sup> In addition to the areas of exclusive competences, the EU may acquire exclusive external competence to the extent that it has exercised internally shared competences (for example, in the field of transport). Member States retain varying degrees of independent regulatory authority, which may result in the adoption of national measures that affect trade within the EU, and with non-EU countries.

2.4. The EU's trade policy is decided through the "ordinary legislative procedure" under which the Commission puts forward legislative proposals to the European Parliament and the Council which may, in turn, propose amendments. If the Parliament and the Council cannot reach agreement on draft legislation at a second reading, a conciliation committee composed of equal numbers of

<sup>2</sup> Article 288, TFEU.

<sup>3</sup> The Commission indicates that trade policy is administered, in general, in the form of regulations which ensures the uniformity implementation of the common commercial policy EU-wide.

<sup>4</sup> Article 207 (1) TFEU.

representatives from both institutions is convened to negotiate a joint text. If the conciliation committee reaches an agreement, the text may be adopted as an EU act.

2.5. The Commission implements trade policy through "delegated acts" and "implementing acts".<sup>5</sup> Under "delegated acts", the legislators (i.e. the Council and the European Parliament) delegate power to the Commission to adopt non-legislative acts of general application, in order to supplement or amend certain non-essential elements of the legislative act. Under "implementing acts", the Commission, where specified in the primary legislation, acquires the necessary implementing powers, in instances where uniform conditions for implementing legally binding Union acts are needed. The Commission's exercise of implementing powers is controlled by the member States through "comitology", the procedure whereby committees composed of representatives from member States assist the Commission in executing its "implementing powers" conferred on it by the legislator.

2.6. New rules of "comitology" came into effect on 1 March 2011.<sup>6</sup> According to the Commission, these new rules not only increase the transparency and effectiveness of policy implementation in the area of trade policy, but also give the Commission more flexibility and greater political responsibility.<sup>7</sup> The adaptation of trade instruments to the new "comitology" rules is provided by the Trade Omnibus Proposals (Omnibus I and II). At the time of drafting this Report, the Trade Omnibus Proposals had not yet been adopted by the Council and the European Parliament.

2.7. The Trade Omnibus Proposals form part of the alignment of legislation to the new regime for implementing and delegated acts introduced by the Lisbon Treaty. Trade Omnibus I, adopted by the Commission in March 2011, converts all procedures that were not based on the 1999 comitology decision into implementing or delegated acts. The Commission noted that Omnibus I deals with 24 pieces of legislation, largely trade defence instruments (the anti-dumping regulation, safeguard legislation etc.). Trade Omnibus II, adopted by the Commission in June 2011, converts existing decision-making systems based on the 1999 comitology decision. The Commission noted that Omnibus II concerns 12 pieces of legislation.

2.8. Before commencement of trade negotiations with a non-EU territory or territories, the Commission must acquire prior authorization from the Council whose decisions are taken by qualified majority voting (QMV).<sup>8</sup> The Commission must conduct negotiations in consultation with a special committee appointed by the Council (usually the TPC Committee), and within the framework of relevant Council negotiating directives. The Commission must report the progress of negotiations regularly to the special committee and to the European Parliament.

2.9. On ratification of trade agreements, the European Parliament and the Council vote on trade agreements as a whole. The Council may agree to the provisional application of a trade agreement, where parliamentary consent is not required. However, if the European Parliament were to refuse to consent to the conclusion of an agreement, the provisional application would have to be discontinued.

2.10. The European Parliament ratifies trade agreements by simple majority, while the Council generally needs a qualified majority to give consent. Unanimity by the Council is required for agreements on trade in services, trade-related intellectual property rights, and foreign direct investment that include "provisions for which unanimity is required for the adoption of internal rules", as well as for agreements on trade in cultural and audiovisual services that "risk prejudicing the Union's linguistic and cultural diversity", and for agreements in the field of social, education,

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<sup>5</sup> Article 290 and 291(2), TFEU.

<sup>6</sup> Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 (OJ L 55/13, 28 February 2011). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:055:0013:0018:EN:PDF>.

<sup>7</sup> WTO document WT/TPR/M/248/Add.1, 30 August 2011.

<sup>8</sup> Following the enlargement of the EU, under the qualified majority voting (QMV) system there are 345 votes divided among the member States roughly according to population with 255 votes required for a QMV. Germany, France, Italy, and the United Kingdom have 29 votes each; Spain and Poland have 27 votes each; Romania has 14 votes; the Netherlands has 13 votes; Belgium, the Czech Republic, Greece, Hungary, and Portugal have 12 votes each; Austria, Bulgaria, and Sweden have 10 votes each; Denmark, Finland, Ireland, Lithuania, and Slovakia have 7 votes each; Cyprus, Estonia, Latvia, Luxembourg, and Slovenia have 4 votes each; and Malta has 3 votes.

and health services that "risk seriously disturbing the national organization of such services and prejudicing the responsibility of a member State to deliver them".

2.11. For agreements that go beyond the competence of the EU such as common commercial policies, ratification by national parliaments of individual member States may be required.

## 2.2 Trade Policy Objectives and Consultation

2.12. The Lisbon Treaty describes common commercial policy as an integral part of the EU's overall external action. The EU's trade policy is required to address developmental, environmental and social objectives, and contribute to the objectives set out in the Treaty on the European Union, including development and consolidation of democracy and the rule of law, and respect of human rights.

2.13. According to the European Commission, the objectives of the EU's trade policy for the next decade include "tailoring trade and investment policy for those countries most in need".<sup>9</sup> The EU intends to differentiate between developing countries and focus on those most in need. Among the proposals put forward by the Commission are: the reform of the GSP scheme; the use of new rules of origin to improve the complementarity between trade and development; to enhance investment provisions in trade agreements to grant legal certainty to investors, and thus to enhance FDI potential; to provide market access to certain services sectors for least-developed countries; and to conclude Economic Partnership Agreements with interested ACP countries.

2.14. DG Trade maintains the Civil Society Dialogue, which provides registered stakeholders with an opportunity to participate in meetings with the Commission on trade and trade-related issues. In addition, DG Trade holds public consultations on major policy initiatives where participation is open to EU and non-EU parties. Proposed regulations are published in *the Official Journal of the European Union* in the C series; and the final regulations are published in the L series. The Commission indicated that its major political priorities, including legislative proposals, are presented in its Annual Work Programme; roadmaps are also available on the internet providing details of the content and timing of each planned regulatory initiative, including public stakeholder consultation and impact assessment.<sup>10</sup>

2.15. The Commission carries out impact-assessment analysis to support its decision-making for all proposals with significant direct impact, including in the trade policy area.<sup>11</sup> The impact-assessment process assesses different policy options by comparing both potential benefits and costs in economic, social and environmental terms. The system relies on stakeholder consultations, and impact-assessment reports are published once the Commission's decision has been taken.<sup>12</sup> In the case of trade negotiations, the Commission carries out "trade sustainability impact assessments" (SIAs) to analyse the economic, environmental and social impact of the EU trade agreements for the EU and its trading partners. SIAs inform negotiations and are independent studies conducted by external consultants, involving comprehensive consultation of stakeholders to ensure a high degree of transparency and taking account of the knowledge and concerns of relevant interest groups both in the EU and in the trading partner. The Commission is committed to better assessing the impact of trade initiative including carrying out ex-post analysis of agreement implementation.<sup>13</sup> SIAs are also published online.<sup>14</sup>

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<sup>9</sup> European Commission document COM(2012) 22 final, 27 January 2012. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc\\_148992.EN.pdf](http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148992.EN.pdf).

<sup>10</sup> European Commission online information, "European Commission at work". Viewed at: [http://ec.europa.eu/atwork/key-documents/index\\_en.htm](http://ec.europa.eu/atwork/key-documents/index_en.htm)

<sup>11</sup> European Commission online information, "Impact Assessment". Viewed at: [http://ec.europa.eu/governance/impact/index\\_en.htm](http://ec.europa.eu/governance/impact/index_en.htm)

<sup>12</sup> European Commission online information, "List of Impact Assessment". Viewed at: [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/cia\\_2013\\_en.htm](http://ec.europa.eu/governance/impact/ia_carried_out/cia_2013_en.htm)

<sup>13</sup> European Commission document COM(2012) 22 final, 27 January 2012. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc\\_148992.EN.pdf](http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148992.EN.pdf).

<sup>14</sup> European Commission online information, "Sustainability impact assessments". Viewed at: <http://ec.europa.eu/trade/analysis/sustainability-impact-assessments/assessments/>.

2.16. During the period under review, Croatia signed an accession treaty with the EU<sup>15</sup>; accession negotiations are ongoing with Iceland, Turkey and Montenegro.

### 2.3 Participation in the World Trade Organization

2.17. As stated in the Commission Communication, the multilateral agenda remains a priority for the EU, and the EU's "absolute priority must be to preserve and strengthen the multilateral trading system".<sup>16</sup>

2.18. The EU is an original member of the WTO and each member State is also a Member. The EU, through the European Commission, represents all the member States in the WTO. The EU is a contracting party to the Agreement on Government Procurement (GPA), a participant in the Information Technology Agreement (ITA), and a signatory to the Agreement on Trade in Civil Aircraft.

2.19. Following the entry into force of the Geneva Agreement on Trade in Bananas, the EU submitted modifications and rectifications to the EU-15 schedule on 24 July 2012<sup>17</sup>, which was certified, effective 27 October 2012.<sup>18</sup> The EU's tariff concessions and agricultural commitments regarding agricultural market access, domestic support, and export subsidies to reflect the enlargement from 15 to 27 member States have not yet been formally agreed in the WTO and consolidated in an EU-25 or EU-27 goods schedule.<sup>19</sup> In the context of this Trade Policy Review, the Commission indicated that the EU will submit its EU-25 schedule for certification in 2013. Negotiations to consolidate the EU's services commitments following the accession of Bulgaria and Romania have not yet been concluded. With regard to the certified EU-25 services schedule, 18 EU member States have ratified the schedule, as of October 2012.<sup>20</sup>

2.20. The EU submitted numerous notifications to the WTO during the review period, covering, *inter alia*, agriculture, trade remedies, technical regulations, regional trade agreements, and preferential rules of origin (Table A2.2). In 2013, the EU submitted five notifications under Article III:3 of the GATS, covering legislation that entered in force in 2012.<sup>21</sup> Three of these notifications were related to the financial services sector, including regulations on short selling and credit default swaps; and over-the-counter derivatives, central counterparties and trade repositories, and the Solvency II Directive (section 4.3.1). The other two notifications concerned transport services, including the Single Railway Area Directive, and Regulation on Aircrew (section 4.3.3).

2.21. During the period under review, the EU was involved in three new cases as a respondent, and in five new cases as a complainant under the Dispute Settlement Mechanism (Table A2.3). In addition, the EU was a third party in 13 new cases.

### 2.4 Preferential Trade Agreements and Arrangements

#### 2.4.1 Unilateral preferences

2.22. The EU's GSP consists of three arrangements:

- Standard GSP, which provides tariff preferences to eligible developing countries;
- GSP+, which offers additional tariff reductions to "vulnerable" countries that implement international conventions in the fields of human rights, core labour standards, sustainable development, and good governance; and

<sup>15</sup> *Official Journal of the European Union*, L112, Vol. 55, 24 April 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:112:FULL:EN:PDF> [14.12.12].

<sup>16</sup> European Commission document COM(2012) 22 final, 27 January 2012. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc\\_148992.EN.pdf](http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148992.EN.pdf).

<sup>17</sup> WTO document G/MA/TAR/RS/297, 27 July 2012.

<sup>18</sup> WTO document WT/Let/868, 30 October 2012.

<sup>19</sup> WTO document G/MA/W/23/Rev.8, 23 April 2012.

<sup>20</sup> WTO document S/C/M/111, 21 November 2012.

<sup>21</sup> WTO documents S/C/N/684, S/C/N/685, S/C/N/686, S/C/N/687, and S/C/N/688, 13 March 2013.

- Everything But Arms (EBA), which offers duty-free and quota-free access for all products except arms and ammunitions from least-developed countries (LDCs).

2.23. Under Regulation (EU) No. 978/2012 of 25 October 2012, the EU adopted a new General Scheme of Preferences (GSP) which will apply on 1 January 2014 while current preferences provided in Regulation (EC) No. 732/2008 apply till 31 December 2013.<sup>22</sup>

2.24. According to the European Commission, the new GSP scheme will concentrate GSP benefits on fewer countries because 34 countries have equivalent or better preferential access under other arrangements (such as free trade agreements), and for 20 countries classed as high or upper-middle income for the most recent three years by the World Bank. Also, 33 overseas countries and territories (OCTs) of developed countries, most of which are EU OCTs, that have alternative market access arrangements will no longer be eligible for preferences.<sup>23</sup> Thus when the new preferences apply, the number of GSP beneficiary countries will decrease from the current 176 to 89.<sup>24</sup> The EU considers that the impact of removing "more advanced developing countries" out of GSP preferences is small, and the "marginal drop in exports by the more advanced economies can potentially provide significant opportunities for the poorest".<sup>25</sup>

2.25. Under the graduation system in the GSP regulations, imports of a particular product from a developing country no longer have preferential access when they exceed a certain level, defined as a percentage of total imports of that product from all GSP beneficiaries. Under Regulation (EU) No. 978/2012, the thresholds for graduation will increase to 17.5% (from 15% previously) in 2014 and for textiles 14.5% (up from 12.5%). Production sections used for graduation increase from 21 to 32. The Commission noted that this finer product classification avoids graduation "overshoots". Other changes to the graduation system also mean that the GSP+ arrangement will be exempted from graduation.<sup>26</sup> A list of graduated sectors for 2014-16 is available on the Commission website.<sup>27</sup>

2.26. Under the new regulation, beneficiary countries are required to effectively implement conventions in order to maintain preferences.<sup>28</sup> Furthermore, eligible countries need to apply for GSP+ preferences, even if they are GSP+ beneficiaries under the current scheme.

2.27. GSP, GSP+ and EBA treatment may be temporarily withdrawn in certain circumstances, including: serious and systematic violation of human and labour rights; exported goods being made by prison labour; serious shortcomings in customs control; serious and systematic unfair trading practices, including those affecting the supply of raw materials that have an adverse effect on the EU's industry and have not been addressed by the beneficiary country; and serious and systematic infringement of the objectives adopted by Regional Fishery Organisations or other international arrangements.<sup>29</sup> If the unfair trading practices are subject to EU anti-dumping or countervailing measures, GSP treatment of the products concerned may not be withdrawn. Temporary withdrawal is preceded by an investigation.

2.28. The new regulation provides that EU producers may request initiation of a safeguard investigation if the GSP imports in volumes and/or at prices cause or threaten to cause serious deterioration in the economic and/or financial situation of the EU producers; the last regulation did not offer this provision to EU producers, although the same substantive conditions applied. Special safeguards for clothing are extended to plain textiles and to ethanol. The EU has not removed any

<sup>22</sup> Technically, the current GSP scheme under Council Regulation No. 732/2008 expired on 31 December 2011. However, under Regulation No. 512/2011 it has been extended until 31 December 2013.

<sup>23</sup> European Commission DG Trade online information. Viewed at: <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/> [January 2013].

<sup>24</sup> The Commission pointed out the distinct between "eligible countries" and "beneficiary countries". According to the Commission, high or upper middle income economies remain "eligible" for the GSP but do not receive tariff preference as "beneficiaries". In case situation changes (e.g. no longer classified as high or upper middle income, or other preferential arrangements terminated), the "eligible countries" will be back on the list of beneficiaries again.

<sup>25</sup> European Commission (2013).

<sup>26</sup> European Commission (2013).

<sup>27</sup> Commission Implementing Regulation (EU) No. 1213/2012, viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/december/tradoc\\_150166.pdf](http://trade.ec.europa.eu/doclib/docs/2012/december/tradoc_150166.pdf) [18.12.12]

<sup>28</sup> Article 15, Regulation (EU) No. 978/2012.

<sup>29</sup> Article 19, Regulation (EU) No. 978/2012.



GSP preferences under the safeguard clause. Procedures regarding safeguard measures under the GSP will be published in 2013.

2.29. The new regulation will extend the validity of standard GSP to ten years (currently three years), and offers at least a one year transition period for graduation and/or changes in the beneficiaries' list. More tariff lines will be subject to preferential treatment under the new regulation.<sup>30</sup>

2.30. Under the current GSP scheme, there were two main developments. First, Cape Verde successfully requested and obtained GSP+ treatment. This provided for a smooth transition from its previous EBA status, which expired on 31 December 2011 as the country ceased to be a Least Developed Country according to the UN. The expiry took place after a transition period of four years. Second, an investigation was initiated in March 2012 to assess whether Bolivia's GSP+ preferences should be temporarily withdrawn. The investigation was subsequently closed in March 2013, and Bolivia retained GSP+ preferences.

2.31. There was no change in the GSP rules of origin during the review period (section 3.1.3).

2.32. Regarding other unilateral measures outside the GSP, tariff preferences were granted to six countries in the Western Balkans which expired in December 2011, those granted to Moldova which expired in December 2013 have been extended to 31 December 2015.<sup>31</sup>

#### 2.4.2 Reciprocal preferences

2.33. The EU maintains the European Economic Area agreement with Iceland, Liechtenstein and Norway, allowing these countries to participate in the internal market for free movement of goods, capital and labour. Switzerland has several bilateral agreements with the EU, covering, *inter alia*, the free movement of persons, trade in agricultural products, public procurement, technical barrier to trade, transport, research, taxation of savings, and fighting against fraud. The EU also maintains Customs Unions with Andorra, San Marino and Turkey.

2.34. The EU has 33 FTAs with other countries (Table 2.2). The FTAs with Albania, CARIFORUM States, Chile, Croatia, Korea, the Former Yugoslav Republic of Macedonia, Mexico, and Montenegro, cover both goods and services. The EU considers that "new trade agreements go beyond import tariffs, whose importance has diminished, addressing regulatory barriers in goods, services and investment, intellectual property rights, government procurement, the protection of innovation, sustainable development and other important issues".<sup>32</sup>

**Table 2.2 Active free-trade agreements signed by the EU, December 2012**

RTA name	Coverage	Date of entry into force
European Economic Area (EEA)	Services	1 January 1994
EU-Albania	Goods and services	1 December 2006 (G) 1 April 2009 (S)
EU-Algeria	Goods	1 September 2005
EU-Andorra	Goods	1 July 1991
EU-Bosnia and Herzegovina	Goods	1 July 2008
EU-CARIFORUM States EPA	Goods and services	1 November 2008 <sup>a</sup>
EU-Chile	Goods and services	1 February 2003 (G) 1 March 2005 (S)
EU-Croatia	Goods and services	1 March 2002 (G) 1 February 2005 (S)
EU-Eastern and Southern Africa States Interim EPA	Goods	14 May 2012 <sup>a</sup>

<sup>30</sup> 15 new tariff lines were added to GSP as "non-sensitive"; 4 tariff lines under GSP turned "non-sensitive" from "sensitive"; and 4 new tariff lines are added to GSP+.

<sup>31</sup> Regulation (EU) No. 1336/2011 of the European Parliament and of the Council provides the extension for Western Balkans countries, and Regulation (EU) No. 581/2011 of the European Parliament and of the Council for the extension for Moldova.

<sup>32</sup> European Commission document COM(2010) 612 final, 9 November 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0612:FIN:EN:PDF>.



RTA name	Coverage	Date of entry into force
EU-Egypt	Goods	1 June 2004
EU-Faroe Islands	Goods	1 January 1997
EU-Former Yugoslav Republic of Macedonia	Goods and services	1 June 2001 (G) 1 April 2004 (S)
EU-Iceland	Goods	1 April 1973
EU-Israel	Goods	1 June 2000
EU-Jordan	Goods	1 May 2002
EU-Korea	Goods and services	1 July 2011
EU-Lebanon	Goods	1 March 2003
EU-Mexico	Goods and services	1 July 2000 (G) 1 October 2000 (S)
EU-Montenegro	Goods and services	1 January 2008 (G) 1 May 2010 (S)
EU-Morocco	Goods	1 March 2000
EU-Norway	Goods	1 July 1973
EU-Overseas countries and territories (OCT)	Goods	1 January 1971
EU-Palestinian Authority	Goods	1 July 1997
EU-Papua New Guinea/Fiji	Goods	20 December 2009 <sup>a</sup>
EU-San Marino	Goods	1 April 2002
EU-Serbia	Goods	1 February 2010
EU-South Africa	Goods	1 January 2000
EU-Switzerland-Liechtenstein	Goods	1 January 1973
EU-Syria	Goods	1 July 1977
EU-Tunisia	Goods	1 March 1998
EU-Turkey	Goods	1 January 1996

a Date of provisional application. Not yet entered into force.

Source: WTO Regional Trade Agreements Information System (RTA-IS).

2.35. During the period under review, the FTA with Korea (goods and services) entered into force, with the EU eliminating 6,399 lines of customs duty for imports from Korea. Together with the 2,326 lines of already MFN duty free, 93.8% of the EU's total imports from Korea are duty free. For those products for which the EU implements an "entry price scheme", the EU commits to remove the *ad valorem* customs duty applicable in accordance with its commitments in the Agreement. The specific duty component for some of these products (including cucumbers, fresh pears and cherries, and unfermented grape juice and must) is eliminated immediately; others including fresh or chilled vegetables and fresh or dried fruit will be subject to tariff elimination within 2 to 20 years of entry into force of the Agreement, except for tomatoes, oranges, monreales and satsumas.

2.36. In addition, the FTA with Korea has provisions on non-tariff measures, *inter alia*, technical regulations, standards, and conformity assessment. For instance, for electronics originating in Korea or the EU, third-party testing or certification for EMC or safety of covered products are eliminated except cases covered by the provisions on exceptions and emergency measures, and for motor vehicles and parts originating from Korea or the EU, they can access each other's market as long as they meet technical regulations corresponding to the relevant UN/ECE Regulations. The EU recognizes the equivalence for 74 different areas of technical regulations for which the UN/ECE Regulations exist.<sup>33</sup>

2.37. The FTA with Korea also covers trade in services with a positive-list approach for services sectors. Market access and national treatment are granted, subject to conditions and qualifications, to the services and services providers/establishments and investors in the sectors inscribed in the lists of commitments (Table 2.3). The list of commitments does not include measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures when they do not constitute a market access or a national treatment limitation within the meaning of the Agreement. The FTA with Korea also includes provisions with regard to sustainable development (e.g. labour, environment).

<sup>33</sup> WTO document WT/REG296/1/Rev.1, "Factual Presentation: Free-Trade Agreement between the European Union and the Republic of Korea", 31 August 2012.

**Table 2.3 The EU's services commitments under the FTA, and comparison with its GATS commitments**

Sectors	GATS	FTA with Korea
<b>1. BUSINESS SERVICES</b>		
A. Professional services	√	Improved
B. Computer and related services	√	Improved
C. Research and development	√	Improved
D. Real estate	√	Similar
E. Rental/leasing services without operators	√	Similar
F. Other	√	Improved
<b>2. COMMUNICATION SERVICES</b>		
A. Postal	-	New
B. Courier	-	-
C. Telecommunication	√	Improved
D. Audiovisual	-	-
E. Other	-	-
<b>3. CONSTRUCTION AND RELATED ENGINEERING SERVICES</b>	√	Improved
<b>4. DISTRIBUTION SERVICES</b>	√	Improved
<b>5. EDUCATION SERVICES</b>	√	Improved
<b>6. ENVIRONMENTAL SERVICES</b>	√	Improved
<b>7. FINANCIAL SERVICES</b>		
A. All insurance and insurance-related services	√	Improved
B. Banking and other financial services	√	Improved
<b>8. HEALTH RELATED AND SOCIAL SERVICES</b>	√	Improved
<b>9. TOURISM AND TRAVEL RELATED SERVICES</b>		
A. Hotels and restaurants	√	Improved
B. Travel agencies and tour operators	√	Improved
C. Tourist guides	√	Improved
D. Other	-	-
<b>10. RECREATIONAL, CULTURAL AND SPORTING SERVICES</b>	√	Improved
<b>11. TRANSPORT SERVICES</b>		
A. Maritime	√	Improved
B. Internal waterways	√	Improved
C. Air	√	Improved
D. Space	-	-
E. Rail	√	Improved
F. Road	√	Improved
G. Pipeline	-	New
H. Services auxiliary to all modes of transport	√	Improved
I. Other	√	Similar
<b>12. OTHER SERVICES NOT INCLUDED ELSEWHERE</b>	√	Similar

√ Commitments in the GATS schedule (full or partial).  
 - No commitments.

Note: New: New commitments made under the Agreement.  
 Improved: Improved commitments made under the Agreement compared to those under the GATS.  
 Similar: Similar commitments made under the Agreement as those under the GATS (though with minor improvements).

Source: WTO Document WT/REG296/1/Rev.1, 31 August 2012.

2.38. The EU completed the technical negotiations on two FTAs during the review period: the agreement with Singapore on 16 December 2012 (except on investment protection, on which talks continue), and the deep and comprehensive Free-Trade Agreement (DCFTA) with Ukraine as a part of a wider EU-Ukraine Association Agreement. These two agreements had not been signed at the time of drafting this report. According to the Commission, the draft EU-Singapore FTA is considered to be of similar calibre to the EU-Korea FTA. The DCFTA with Ukraine foresees dismantlement of both import and export duties (with limited temporary exceptions for sensitive sectors), but also services and investment market access for internal EU market treatment, subject to conditions; the Agreement also contains trade-related provisions on energy, a dispute settlement mechanism and commitments on trade and sustainable development.

2.39. During the review period, the interim Economic Partnership Agreement (EPA) with Eastern and Southern Africa States also entered into provisional application.<sup>34</sup> The EU's trade relations with the African, Caribbean and Pacific (ACP) countries aim to be governed by EPAs, which are to replace unilateral preferences granted under the Cotonou Agreement until the end of 2007. The EPA programme involves seven regional configurations: CARIFORUM, Pacific, Central Africa, West Africa, Southern African Development Community, East African Community, and Eastern and Southern Africa. As of January 2008, the EU has granted duty-free and quota-free (DFQF) access to all ACP countries that had initialled an EPA by the end of 2007.

2.40. Currently, the following EPAs are in provisional application: CARIFORUM region has concluded a "comprehensive EPA"; Papua New Guinea ratified the interim EPA in the Pacific region; and four countries in Eastern and Southern Africa (i.e. Madagascar, Mauritius, Seychelles, and Zimbabwe) ratified the ESA interim EPA. No other regions in Africa has concluded or ratified an EPA with the EU. In 2011, the Commission proposed that DFQF access be removed as of 1 January 2014 for those ACP countries that initialled an EPA in 2007 but have not yet signed and ratified it. The European Parliament proposed to extend this deadline to 1 January 2016. The Council has endorsed the 2014 date. At the time of writing this report, the legislative procedure to set the date continues between the Council, the Commission and the Parliament.

2.41. FTAs in force with Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, and Tunisia are part of Association Agreements concluded in the context of the Euro-Mediterranean partnership. In December 2011, the Council adopted negotiating directives for Deep and Comprehensive Free Trade Areas (DCFTAs) with Egypt, Jordan, Morocco and Tunisia, to "upgrade" the current trade agreements with these countries; negotiations on a DCFTA will be launched with Morocco in February 2013.

2.42. During the period under review, the EU signed two FTAs: the association agreement with Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama) on 29 June 2012; and the trade agreement with Peru and Colombia on 26 June 2012. The EU expects provisional application of these two agreements to enter into force in 2013.

2.43. The EU is involved in negotiations with Canada, India, Malaysia, Viet Nam, MERCOSUR, and the Gulf Cooperation Council, the negotiation with Viet Nam being launched in June 2012. An Association Agreement, including a DCFTA, between the EU and Armenia, Georgia, and Moldova is under negotiation.<sup>35</sup>

2.44. On 29 November 2012, the Commission was mandated to open free-trade negotiations with Japan.

## 2.5 Foreign Investment

### 2.5.1 Foreign investment regime

2.45. The EU's foreign investment policy has remained largely unchanged since the last Review, with the Lisbon Treaty now providing that foreign direct investment is an integral part of the common commercial policy, which remains an exclusive competence of the EU.

2.46. The EU is in the process of developing and implementing a comprehensive investment policy.<sup>36</sup> The Commission believes that EU international investment policy should seek to ensure the uniform treatment of EU investors, and the network of existing BITs resulting in an "uneven playing field for EU companies investing abroad, which depends on whether they are covered as a 'national' under a certain Member State BIT or not."<sup>37</sup>

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<sup>34</sup> An FTA may be provisionally applied while awaiting consent from the European Parliament and/or ratification by other signatories. Provision application should discontinue when the European Parliament refuse to consent, or other signatories do not ratify.

<sup>35</sup> Details of state-of-play of the EU's FTA can be found on the Commission Memo, 21 December 2012. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc\\_150129.pdf](http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150129.pdf) [19.12.12].

<sup>36</sup> European Commission Memo (MEMO/12/977). Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-12-977\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-977_en.htm) [18.12.12].

<sup>37</sup> European Commission document COM(2010) 343 final, 7 July 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc\\_146307.pdf](http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146307.pdf).

2.47. In addition, the EU has concluded several international agreements with third countries with provisions on market access for foreign investment, and post-establishment national treatment and most-favoured-nation treatment for sectors liberalized by the parties. According to the European Commission, the EU has started filling the gap of "entry" or "admission" through both multilateral and bilateral agreements at EU level covering investment market access and investment liberalization.<sup>38</sup>

2.48. On EU investment negotiations, the Commission intends to include investment provisions in the ongoing trade negotiations, and make investment protection an integral part of the free trade agreements, for example with Canada; or to pursue stand-alone investment agreements, for example with China.

2.49. The Commission considers that investor-to-state dispute settlement mechanisms ensure effective enforcement of investment agreements. Investor-state dispute settlement forms a key part of the inheritance that the EU receives from its member States BITs, and will be included in future EU investment agreements with other countries.

2.50. On 21 June 2012, the Commission released a draft Regulation establishing a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the European Union is party. The regulation seeks to establish the legal and financial certainty for foreign investors in the EU when they have dispute complaints against the EU or its member States. Under the draft regulation, when an investor brings a claim: if the alleged measure is a member State measure and not required by EU law, the member State would bear the financial responsibility flowing from the dispute and may in principle also act to defend the claim; if the measure at issue is an EU measure or a member State measure mandated by EU law, the EU would bear the financial responsibility and could act as defendant. The Commission indicated that the proposed provisions ensure that any final award or settlement award is paid to the investor promptly, regardless of the decisions on the allocation of financial responsibility.<sup>39</sup>

2.51. Article 63 of the Lisbon Treaty prohibits restrictions on capital movements among EU member States, and between EU and non-EU members. Restrictions on direct investment from non-EU members that were in place before December 1993 (December 1999 for Bulgaria, Estonia, and Hungary) are exempt from this prohibition.<sup>40</sup> Exemptions are also granted to restrictions that are "justified on grounds of public policy or public security", and those taken "to prevent infringement of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information".<sup>41</sup>

2.52. The same article of the Lisbon Treaty also prohibits restrictions on payments among EU member States and between member States and third countries. These provisions protect legitimate transfers, for example repatriation of profits from direct investment, to third countries. Article 66 provides that where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, safeguard measures may be taken for a period not exceeding six months, if such measures are strictly necessary.<sup>42</sup> To date no such measure has been taken.

2.53. The Lisbon Treaty prohibits restricted measures on the "freedom of establishment" of EU nationals in the territory of another EU member State. Freedom of establishment extends to EU subsidiaries affiliated to non-EU companies<sup>43</sup>, but not to branches or agencies of non-EU companies.

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<sup>38</sup> European Commission document COM(2010) 343 final, 7 July 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc\\_146307.pdf](http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146307.pdf).

<sup>39</sup> European Commission document COM(2012) 335 final, 21 June 2012. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\\_149567.pdf](http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149567.pdf) [19.12.12].

<sup>40</sup> Article 64, TFEU.

<sup>41</sup> Article 65, TFEU.

<sup>42</sup> Article 66, TFEU.

<sup>43</sup> Article 49 and 54, TFEU.

2.54. Some member States such as France, Germany, and the United Kingdom maintain FDI review procedures for national security purposes. On 9 May 2012, French Decree No. 2012-691 on foreign investments subject to prior authorisation entered into force. The Decree specified the sectors for which foreign investments shall be subject to prior authorisation and removed all references to the notion of indirect control by an investor of a third country. The Act on the Monitoring of Foreigners' Corporate Acquisitions in Finland entered into force on 1 June 2012, with an objective to monitor and restrict when required by national interests, the transfer of assets to foreigners and to foreign organizations and foundations; compared to the previous act of 1992, the categories of enterprises subject to potential review have been reduced.<sup>44</sup>

2.55. According to the OECD, Luxembourg, Portugal, Slovenia, Romania, and the Netherlands had the most open foreign investment regime among EU's member States in 2012.<sup>45</sup>

### 2.5.2 Bilateral investment treaties

2.56. On 12 December 2012, the European Parliament and the Council adopted the Regulation establishing transitional arrangements for bilateral investment agreements between member States and third countries.<sup>46</sup> This Regulation provides legal certainty in EU law for bilateral investment agreements which were signed by EU member States before the entry into force of the Lisbon Treaty. The regulation confirms that member States may maintain in force these agreements notwithstanding the EU's competences relating to investment, until they are replaced by investment agreements concluded by the EU. Member States must notify the Commission which agreements they want to maintain. The regulation also provides for a mechanism authorizing member States, under certain conditions, to negotiate bilateral investment agreements with third countries not immediately scheduled for EU-wide investment negotiations, or to re-negotiate existing agreements.

2.57. As of 15 June 2010, there were more than 1,100 bilateral investment treaties (BITs) between the EU member States and third countries.<sup>47</sup>

## 2.6 Aid for Trade

2.58. The EU and its member States are among the leading providers of aid for trade. In December 2007, the EU adopted a joint strategy on aid for trade with its member States. The strategy aims to support developing countries "to better integrate into the rules-based world trading system and to use trade more effectively in promoting the overarching objective of eradicating poverty". Each year the Commission publishes an annual report on aid-for-trade spending and implementations.<sup>48</sup>

2.59. According to the Commission, the EU, together with its member States, was the largest provider of Aid for Trade (AFT) in the world in 2010 (€10.7 billion), accounting for around 32% of total AFT flow. Since 2008, the EU and its member States also have exceeded the target to provide €2 billion annually for trade-related assistance (TRA) by 2010. In 2010, 60% of global TRA commitment was from the EU and its member States.<sup>49</sup> In addition, "the EU is by far the biggest global official development assistance (ODA) donor, accounting for over half of the total ODA to developing countries" with €53.1 billion in ODA in 2011.<sup>50</sup>

2.60. Building Productive Capacity (BPC) and Trade-related Infrastructure (TRI) represent the most important components of the collective EU AFT, respectively €5.1 billion and €4.8 billion

<sup>44</sup> UNCTAD (2012).

<sup>45</sup> OECD online information, "FDI Regulatory Restrictiveness Index, 5 November 2012". Viewed at: <http://www.oecd.org/investment/fdiindex.htm>.

<sup>46</sup> European Commission Press Release, 12 December 2012. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=854> [19.12.12].

<sup>47</sup> European Commission document COM(2010) 343 final, 7 July 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc\\_146307.pdf](http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146307.pdf) [15.12.12].

<sup>48</sup> European Commission online information, "DG Trade: Aid for Trade". Viewed at: <http://ec.europa.eu/trade/wider-agenda/development/aid-for-trade/>.

<sup>49</sup> European Commission document SWD(2012) 199, 9 July 2012. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc\\_150104.pdf](http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150104.pdf).

<sup>50</sup> European Commission document COM(2012) 366 final, 9 July 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0366:FIN:EN:PDF>.

in 2010. With regard to geographical coverage, Africa still accounted for the largest share at 38% (€3.9 billion), followed by Asia (20%), Europe (13%), America (9%), and Oceania (1%).

2.61. In 2010, the relative shares of the collective EU TRA categories were as follows: Trade Policy and Regulation representing 20%, Trade Development almost 70% and Other Trade Related Needs approximately 10%. 35% of the TRA commitment went to Africa (among which 70% dedicated to South of Sahara), 20% to Asia, and 16% to America.

2.62. With regard to further bolstering the effectiveness of AftT, the EU and its member States intend to pay more attention to LDCs and developing countries most in need, and continue supporting regional and continental integration efforts (including South-South initiatives).

### 3 TRADE POLICIES AND PRACTICES BY MEASURE

#### 3.1 Measures Directly Affecting Imports

##### 3.1.1 Procedures

3.1. The basic customs legislation is the Community Customs Code<sup>1</sup> and its Implementing Provisions.<sup>2</sup> The Modernized Customs Code (MCC) was adopted in June 2008 and is in force but has not yet been applied. The European Commission submitted on 20 February 2012 a proposal to recast the Customs Code as the Union Customs Code (UCC), which will replace the MCC.<sup>3</sup>

3.2. The recast of the Customs Code includes an ultimate deadline of 31 December 2020 (compared to 30 June 2013 in the MCC), giving more time for national authorities and economic operators to develop their IT capacity. According to the Commission, existing customs procedures are to be streamlined in the UCC, once adopted; this also applies to the rules for customs declarations and for the placing of goods under a customs procedure which will be modernized, in particular by requiring that customs declarations, as a rule, be made electronically either as standard or as simplified declarations in accordance with the applicable conditions and requirements.

3.3. Under EU legislation, the term "customs procedure" means: release for free circulation; transit; customs warehousing; inward processing; processing under customs control; temporary admission; outward processing; and exportation. The Commission maintains a website of customs legislation and related case law, and legislative proposals.<sup>4</sup> The Trade Contact Group is the main framework for regular consultations between the European Commission and economic operators on EU customs matters. A website designated for customs consultations is also maintained by the Commission.<sup>5</sup>

3.4. The EU has exclusive competence in the field of customs policy and legislation. Under the Customs Code and its Implementing Provisions, customs procedures are harmonized and monitored at the EU level. National customs laws provide for the implementation of EU customs legislation while national administrations and courts in the member States are in charge of applying EU customs legislation under monitoring by the Commission and oversight of the Court of Justice of the EU. The Commission adopted a Communication on the State of the Customs in December 2012.<sup>6</sup> According to the Communication, a review of governance of the Customs Union will be initiated, with an aim of improving efficiency, effectiveness and uniformity of customs services.

3.5. The time needed to complete import procedures varies between member States.<sup>7</sup> It is among the shortest in the world for Estonia, Cyprus, Denmark (5 days), the Netherlands, Sweden, and the United Kingdom (6 days) but from 1.5 to 1.8 times the average time of OECD countries for Greece, Poland, Slovakia, Czech Republic, Italy and Bulgaria. Hungary requires the longest time for import procedures: 19 days (or 1.9 times the OECD average).

3.6. There has been no change in appeal procedures regarding customs decisions since the last review of the EU. Specific appeals procedures are set out in national legislation, and vary across

<sup>1</sup> Council Regulation (EEC) No. 2913/92, 12 October 1992 (OJ L 302, 19 October 1992). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992R2913:20070101:EN:PDF>

<sup>2</sup> Commission Regulation (EEC) No. 2454/93, 2 July 1993 (OJ L 253, 11 October 1993). Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/procedural\\_aspects/general/regulation\\_2454\\_93\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/procedural_aspects/general/regulation_2454_93_en.pdf)

<sup>3</sup> European Commission COM(2012) 64 final, 20 February 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0064:FIN:EN:PDF>.

<sup>4</sup> European Commission online information, "Legislation". Viewed at: [http://ec.europa.eu/taxation\\_customs/common/legislation/legislation/customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/legislation/legislation/customs/index_en.htm).

<sup>5</sup> European Commission online information, "Customs consultations". Viewed at: [http://ec.europa.eu/taxation\\_customs/common/consultations/customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/customs/index_en.htm).

<sup>6</sup> European Commission document COM(2012) 791 final, 21 December 2012. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/common/publications/com\\_reports/customs/com\(2012\)791\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/customs/com(2012)791_en.pdf).

<sup>7</sup> World Bank online information, "Doing Business, Trading across border". Viewed at: <http://www.doingbusiness.org/data/exploretopics/trading-across-borders>.



member States. Appeals must be lodged in the member State where the decision under dispute has been taken. Most member States require administrative review before a decision can be appealed judicially. The review by national courts of a decision taken by the customs administration of one member State is not binding on the customs administrations of other member States. However, in the context of the last Review of the EU, the Commission pointed out that national courts may seek referral to the European Court of Justice (ECJ) with regard to the interpretation or validity of EU laws. In any event, national courts must refer a matter to the ECJ in case of doubt regarding a European provision.<sup>8</sup> In addition, under some conditions, any person or company that has suffered damage as a result of the action or inaction of the EU or its staff can bring an action seeking compensation before the European Court of Justice (the General Court). In 2011, 10 cases were brought to the General Court,<sup>9</sup> and 19 to the Court of Justice.<sup>10</sup>

3.7. One of the objectives of the Union Customs Code is to replace paper-based customs procedures with EU-wide electronic procedures. Since July 2009, a system of Economic Operator Registration Identification (EORI) has been in place. An EU-wide recognized EORI number is required for economic operators, and persons established in the EU under certain conditions who are involved in activities covered by customs legislation, and for non-established persons if they perform one of the activities listed in Article 41(3) of the Customs Code Implementing Regulation. EORI numbers are unique to each person, and issued by competent authorities of the member States.<sup>11</sup>

3.8. Traders, or their representatives, must lodge import declarations for their imports to the customs office in the member State, either electronically or in writing. Non-established persons may lodge declarations for transit or for temporary admission.<sup>12</sup> In accordance with the relevant provisions<sup>13</sup>, declarants may be authorized, subject to conditions, to lodge: incomplete declaration, simplified declaration, or declaration under the local clearance procedure. From 1 January 2011, the use of a simplified procedure or the local clearance procedure is conditional on the lodging of electronic customs declarations and notifications.<sup>14</sup>

3.9. When customs procedures involve more than one customs authority in the EU, a single authorization may be granted for a customs procedure with economic impact (e.g. customs warehousing, inward processing, processing under customs control, temporary importation, outward processing) or end-use relief. A person may also apply for a single authorisation for simplified procedures which allows the applicant to use local clearance procedures or the simplified declaration procedure applicable in the member State where they are established.

3.10. Wider use of single authorisations for simplified procedures is expected to lead to implementation of centralized clearance as a standard procedure under the Union Customs Code, once adopted. Centralized clearance would allow economic operators to centralize and integrate accounting, logistics and distribution functions with consequent savings in administrative and transaction costs, thus providing genuine simplification. According to the Commission, the impact

<sup>8</sup> WTO document WT/TPR/M/248/Add.1, 30 August 2011.

<sup>9</sup> Court of Justice of the European Union online information, "General Court: Statistics of judicial activity". Viewed at: [http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-06/ra2011\\_statistiques\\_tribunal\\_en.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-06/ra2011_statistiques_tribunal_en.pdf).

<sup>10</sup> Court of Justice of the European Union online information, "Court of Justice: Statistics of judicial activity". Viewed at: [http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-06/ra2011\\_statistiques\\_cour\\_en.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-06/ra2011_statistiques_cour_en.pdf).

<sup>11</sup> EU established persons applied for EORI numbers in the member State where they are established whereas non-established person acquire EORI numbers in the member State where they first perform the activities listed in CCIP. The Commission maintain a document of the list of authorities responsible for assigning EORI numbers in each member State. Viewed at: [http://ec.europa.eu/ecip/documents/who\\_is/eori\\_national\\_implementation\\_en.pdf](http://ec.europa.eu/ecip/documents/who_is/eori_national_implementation_en.pdf).

<sup>12</sup> A non-established person is permitted to lodge a customs declaration for release for free circulation provided that he appoints a customs representative established in the EU unless there are not some specific requirements that the declaration is lodged by a specific person.

<sup>13</sup> Article 253a to 253m, Commission Regulation (EC) No. 1192/2008, 17 November 2008 (OJ L 329, 6 December 2008). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:329:0001:0051:EN:PDF>. See also Article 76, Community Customs Code, and Article 253, Customs Code Implementing Provision.

<sup>14</sup> Article 253a, of the Commission Regulation (EC) No. 1192/2008, 17 November 2008 (OJ L 329, 6 December 2008). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:329:0001:0051:EN:PDF>.



of the financial/economic crisis did not have any negative impact on the number of customs declarations using simplified procedures.<sup>15</sup>

3.11. From 1 January 2011, carriers must lodge at the "customs office of first entry" electronic Entry Summary Declarations (ENS) for goods from outside the EU except for goods from countries that have a security agreement with the EU, i.e. Norway, Switzerland, Liechtenstein, and Andorra.<sup>16</sup> The person lodging the ENS must have an EORI number. Some member States offer the possibility to lodge an ENS at a customs office other than the customs office of entry, provided the ENS is electronically communicated or made available to the customs office of entry; this other customs office is called the "customs office of lodgement".<sup>17</sup> The ENS must be submitted electronically in advance within the suggested time limits; otherwise, goods have to be declared immediately on arrival at the border, which may delay customs clearance pending the results of risk analysis for safety and security purposes.

3.12. EU member States may grant authorized economic operator (AEO) status, based on common criteria<sup>18</sup>, to interested economic operators involved in activities covered by customs legislation. The benefits of AEO status depend on the type of certificate granted to the economic operator<sup>19</sup>, and could include fewer customs controls, or easier admittance to customs simplifications (Table 3.1). Participation in the authorized economic operator programme is voluntary, but not open to persons established outside the EU. The authorized status granted by one member State is recognized by other member States of the EU. When an AEO applies for a specific authorisation for simplified procedure, the conditions and criteria which have already been examined are not examined again. As of 31 January 2013, 12,464 applicants were granted the trusted trader status.<sup>20</sup>

**Table 3.1 Benefits of Authorized Economic Operator Certificates**

	AEO-C	AEO-S	AEO-F
Easier access to customs simplifications	X		X
Prior notifications of controls		X	X
Reduced data requirements for summary declarations		X	X
Fewer physical and documentary controls	X	X	X
Priority treatment if selected for control	X	X	X
Choice of location where control will be carried out	X	X	X

Source: WTO document WT/TPR/M/248/Add.1, 30 August 2011.

3.13. Under EU customs legislation, national customs administrations must issue advance written rulings on tariff classification and origin matters on request.<sup>21</sup> Advance rulings issued by the customs authorities of one member State are binding on national customs authorities of all other member States.<sup>22</sup> The Customs Code Implementing Provisions sets out a procedure to resolve inconsistencies in binding information issued by two or more member States.<sup>23</sup> The Commission maintains a public online database of advance written rulings on tariff classification.<sup>24</sup>

<sup>15</sup> European Commission document COM(2011) 922 final, 20 December 2011. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/common/publications/com\\_reports/customs/com\(2011\)922\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/customs/com(2011)922_en.pdf).

<sup>16</sup> Article 181c of the Customs Code Implementing Regulation sets out several exceptions.

<sup>17</sup> A list of the Member states that allow an ENS to be lodged in an office other than the customs office of entry is available from the European Commission online information. Viewed at: [http://ec.europa.eu/ecip/documents/procedures/ics\\_office-lodgment-overview\\_en.xls](http://ec.europa.eu/ecip/documents/procedures/ics_office-lodgment-overview_en.xls) [January 2013].

<sup>18</sup> Articles 5a (2), Council Regulation (EEC) No. 2913/92, 12 October 1992 and Article 14h-k, Commission Regulation (EEC) No. 2454/93, 2 July 1993.

<sup>19</sup> Article 14a, Commission Regulation (EEC) No. 2454/93, 2 July 1993.

<sup>20</sup> Among which AEO-F, 6,086; AEO-C, 6,022; and AEO-S, 356.

<sup>21</sup> Article 12, Council Regulation (EEC) No. 2913/92, 12 October 1992.

<sup>22</sup> Articles 5 and 11, Commission Regulation (EEC) No. 2454/93, 2 July 1993.

<sup>23</sup> Article 9, Commission Regulation (EEC) No. 2454/93, 2 July 1993.

<sup>24</sup> European Commission online information, "European Binding Tariff Information". Viewed at: [http://ec.europa.eu/taxation\\_customs/dds2/ebti/ebti\\_home.jsp?Lang=en](http://ec.europa.eu/taxation_customs/dds2/ebti/ebti_home.jsp?Lang=en).

### 3.1.2 Customs valuation

3.14. There has been no change in customs valuation legislation since the last Review. According to the Commission, the rules set out in the WTO Customs Valuation Agreement have been transposed into directly applicable EU legislation, i.e. Articles 28 to 36 of the Customs Code, and its related Implementing Provisions (Articles 141 to 181a and annexes 23 to 29).

3.15. The transaction value is the primary basis for customs value determination. The transaction values used are c.i.f. values. Around 95% of all import declarations are accepted in accordance with the transaction value method.

3.16. The Customs Valuation Section of the Customs Code Committee publishes a compendium which contains commentaries and committee conclusions on specific valuation topics, including the interpretation of certain rules on customs valuation brought to the attention of the Committee. The compendium also provides an overview of European Court of Justice rulings in relation to customs valuation. The latest update of the compendium was published in September 2008.

### 3.1.3 Rules of origin

#### 3.1.3.1 Overview

3.17. The EU maintains non-preferential and preferential rules of origin. Non-preferential rules of origin are applied for the purposes of, *inter alia*, implementation of anti-dumping and countervailing measures, quantitative restrictions, MFN tariff quotas, origin marking, contingency measures, and government procurement. Preferential rules of origins are those related provisions set out in unilateral trade arrangements (e.g. the GSP) and reciprocal trade arrangements.

3.18. For non-preferential rules, in cases where more than one country is involved in the production of a good, the country of origin is determined as the country where the product has undergone its "last substantial transformation", i.e. where the product "underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture".<sup>25</sup>

3.19. Under preferential rules, non-originating materials may obtain originating status as long as they have undergone "sufficient working or processing". The origin rules for "sufficient working or processing" are provided in the table of "list rules", which are expressed as:

- a change of HS tariff heading or subheading criterion;
- specific processing criterion; or
- value-add or *ad valorem* criterion.

3.20. Working or processing considered insufficient to confer origin ("minimal operation") is defined in the relevant articles of individual preferential trade arrangements. In general, operations are considered "simple" when neither special skills nor machines, apparatus or tools especially produced or installed for those operations, are required. Operations such as preserving operations to ensure that a product remains in good condition during transport and storage, breaking up and assembly of packages, simple mixing of products, simple assembling of parts are considered as insufficient operations.

3.21. Regarding the value-added criterion for obtaining the originating status, there are several rules on cumulation of origin. These rules allow countries with identical rules of origin to work together while the preference is maintained. When countries are in the same cumulation system, it is not necessary that the processing carried out on the materials imported from the other countries in the same cumulation system satisfies the list rules as long as the minimal operation requirements are satisfied:

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<sup>25</sup> Article 24, Council Regulation (EEC) No. 2913/92, 12 October 1992.

- a. Bilateral cumulation: materials originating in the donor country or partner country may be used for cumulation purposes;
- b. Diagonal or regional cumulation: materials originating in a third country belonging to a system or group of cumulation may be used for cumulation purposes;<sup>26</sup>
- c. Full cumulation: all operations carried out in the countries belonging to a system or group of cumulation are qualified.<sup>27</sup>

3.22. Non-originating products or materials that do not satisfy the minimal operation requirements may be "tolerated". The "tolerance" level varies in different preferential regimes.

3.23. Binding origin information (BOI) decisions may be issued by the customs authorities in the member States when importers are uncertain about the origin of products. BOIs are binding in all member States in respect of imported goods, provided the goods and the circumstances determining the acquisition of origin are identical in every respect to what is described in the BOI. BOIs are valid for three years after issuance.

### 3.1.3.2 GSP rules of origin

3.24. There has been no change in the rules of origins for the GSP since the last Review. These rules entered into force on 1 January 2011, and are more consistent, simplified and flexible compared to the previous rules.

3.25. For non-originating materials used in manufactured goods of GSP countries, 15% of the ex-works price is the maximum "tolerance" level, if those materials were not sufficiently processed in the beneficiary country; 15% of the product weight for products of HS chapters 2, and 4-24 other than processed fishery products of chapter 16, and products under HS chapters 50-63 are subject to specific tolerance rules.

3.26. Regarding the value-added criterion of GSP rules of origin, least-developed countries (LDCs) are allowed to have up to 70% of non-originating materials in most industrial and processed agricultural exports, subject to sufficient-processing conditions; other GSP beneficiary countries may also have up to 70% for some products<sup>28</sup> and up to 50% for others.<sup>29</sup> For most apparel products originating in LDCs, a single transforming requirement replaces the previous double transformation requirement.<sup>30</sup>

3.27. GSP countries may cumulate origin with countries in the same regional group, provided that the processing carried out goes beyond insufficient processing operations. If the operation does not go beyond the insufficient processing, the product may be still be considered as originating provided that the value of the processing carried out there is greater than the value of the materials used in any of the other countries of the group of cumulation, otherwise the country in the regional group that accounts for the highest of the customs values of the originating materials is considered the country of origin for the product. There are four regional groups in the GSP scheme of the EU:

- a. Group I: Brunei-Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore<sup>31</sup>, Thailand, and Viet Nam;

<sup>26</sup> If the minimal operation requirements are not satisfied, the preference is still allowed to be cumulated but the country of origin is determined by where the sufficient last working or processing operation took place.

<sup>27</sup> Preferences for products or materials are cumulated for operations taken place in the territories of certain agreements (e.g. EPA), regardless the minimal operation requirements.

<sup>28</sup> The rule of origin for all products of HS chapters 42, 45, 46, 47, 48, 49, 66, 89, 91, 92, 94, and most of products of HS chapters 25, 27, 34, 40, 43, 44, 68, 70, 71, 82, 83, 86, 88, 84, 85, 90, 95, 96 refers to threshold of 70% maximum non-originating materials for both LDC and non-LDCs.

<sup>29</sup> The non-LDC countries in the GSP scheme are no longer required to satisfy the secondary local component condition.

<sup>30</sup> European Commission Regulation (EU) No. 1063/2010, entered into force 1 January 2011.

<sup>31</sup> Singapore is not a beneficiary country under the GSP.

- b. Group II: the Plurinational State of Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, and the Bolivarian Republic of Venezuela;
- c. Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka; and
- d. Group IV: Argentina, Brazil, Paraguay, and Uruguay.

3.28. Upon request from the beneficiary country, cumulation may be possible among countries in Groups I and III, subject to conditions. Under regional cumulation, exporters must be careful of whether the input materials from other countries in the region are "graduated" or "excluded" from the GSP.<sup>32</sup>

3.29. Similar to bilateral cumulation, GSP beneficiary countries may cumulate origin with products under HS chapters 25-97 from Norway, Switzerland, Liechtenstein and Turkey. Additionally, GSP beneficiary countries may apply to the Commission for cumulation extension to countries that have free trade agreements with the EU. The Commission may grant conditional approval for extended cumulation. Products under HS chapters 1-24 are excluded from extended cumulation.

3.30. Direct transport is no longer required for GSP origin goods upon the condition of non-manipulation. Storage of products and splitting of consignments may now be possible under the supervision of the customs authorities of the transit countries, hence, the GSP benefits may be maintained in cases where the goods are moved through regional distribution hubs.<sup>33</sup>

### 3.1.3.3 Other preferential rules of origin

3.31. The EU's preferential rules of origins vary among different reciprocal trade arrangements.<sup>34</sup> However, there are general rules that are applied in most cases; exceptions for application of the "general rules" differ from trade arrangements.<sup>35</sup> According to the Commission, a large proportion of the EU's preferential rules share common features in the general provisions and list rules; relevant provisions in the FTAs signed before the finalisation of the GSP reform were based on the "traditional" preferential structures, i.e. the rules applicable in the EU's agreements within the pan-Euro-Mediterranean area. The EU also indicated in the context of this Review that a general extension of GSP rules to other preferential arrangements cannot be considered systematically, but that many aspects of the general provisions as well as some aspects of the list rules (simplification, modernisation) of the GSP-type rules have been considered for some FTA negotiations.

3.32. On cumulation rules, diagonal cumulation prevails in the agreements with EFTA countries, Mediterranean countries, and Western Balkan countries. The EU grants full cumulation to ACP countries (including South Africa) as well as Algeria, Morocco, and Tunisia. Common origin is established for industrial products in the European Economic Area with EFTA countries. Bilateral cumulation is applied to other reciprocal trading agreements, i.e. with Chile, Korea and Mexico.

### 3.1.4 Tariffs

#### 3.1.4.1 MFN tariffs

3.33. The EU offers MFN or better treatment to WTO and non-WTO Members.

3.34. Under the Lisbon Treaty, common customs tariff duties are set by the European Parliament and the Council, or the Council based on a proposal from the Commission.<sup>36</sup> The basic legal

<sup>32</sup> European Commission (2010a).

<sup>33</sup> European Commission Regulation (EU) No. 1063/2010, entered into force 1 January 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:307:0001:0081:en:PDF>.

<sup>34</sup> European Commission online information, "DG TAXUD: Arrangements list". Viewed at: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/rules\\_origin/preferential/article\\_779\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_779_en.htm).

<sup>35</sup> For detailed summary, see the HMRC Notice 828, "Tariff Preferences: Rules of origin for various countries", November 2012. Viewed at:

[http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE\\_CL\\_000193](http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_CL_000193).

<sup>36</sup> Article 31, TFEU.

instrument on the tariff is Regulation No. 2658/87.<sup>37</sup> The tariff nomenclature, known as the Combined Nomenclature, is based on the Harmonized Commodity Description and Coding System (HS), but is further specified at the eight-digit level. The 2013 tariff reflects the fourth amendment to the HS (HS 2012).<sup>38</sup> The nomenclature and rates of duty are contained in Annex I of Regulation No. 2658/87. An updated version of Annex I is published annually as a Commission regulation in the L-Series of the *Official Journal of the European Union*.<sup>39</sup>

3.35. The EU maintains a public, online database that integrates tariff rates and other measures, including quantitative restrictions and contingency measures, applied to imports (and exports). According to the Commission, the database, known as TARIC, "secures the uniform application [of these measures] by all Member States and gives all economic operators a clear view of all measures to be undertaken when importing or exporting goods."<sup>40</sup> The nomenclature codes under TARIC are specified at the ten-digit level.

3.36. According to the Commission, there have been no changes in applied tariff rates of the EU; changes in the average rates only reflect the changes of nomenclatures, and the changes in world price of certain goods subject to non-*ad valorem* rates.

3.37. The 2013 tariff comprises 9,376 lines at the eight-digit level: around one-quarter of all tariff lines are duty free; and approximately 9% of lines are "nuisance" rates (Table 3.2). The simple average applied MFN tariff rate, including the *ad valorem* equivalents (AVEs) of non-*ad valorem* tariff rates, was 6.5%, slightly less than in 2008. Based on the relevant WTO definition, the average applied rate for agriculture fell to 14.8% from 15.2% in 2011 and 17.9% in 2008. This reflects increases in prices of agricultural products and the resulting reduction in the AVEs of non-*ad valorem* tariff rates applied on such products. The average applied rate for non-agricultural products was at 4.4%. The tariff shows escalation between semi- and fully processed goods, and reverse escalation between raw materials and semi-processed goods; tariff quotas cover around 5% of tariff lines (Table 3.3).

**Table 3.2 Structure of MFN tariffs in the EU-27, 2008, 2011, and 2013**

(%)

	MFN applied			Final bound (2013)
	2008 <sup>a</sup>	2011 <sup>b</sup>	2013 <sup>c</sup>	
Bound tariff lines (% of all tariff lines)	100	100	100.0	100.0
Simple average tariff rate	6.7	6.4	6.5	6.6
Agricultural products (WTO definition)	17.8	15.2	14.8	14.8
Non-agricultural products (WTO definition)	4.0	4.1	4.4	4.4
Agriculture, hunting, forestry and fishing (ISIC 1)	9.3	8.7	8.6	8.9
Mining and quarrying (ISIC 2)	0.2	0.2	0.2	0.3
Manufacturing (ISIC 3)	6.7	6.3	6.4	6.5
Duty-free tariff lines (% of all tariff lines)	25.3	25	24.7	24.0
Simple average rate of dutiable lines only	9.05	8.51	8.7	8.7
Tariff quotas (% of all tariff lines)	4.8	4.9	5.0	5.0
Non- <i>ad valorem</i> tariffs (% of all tariff lines)	10.1	10.5	10.7	10.7
Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	2.7	2.9	2.9	2.9
Domestic tariff peaks (% of all tariff lines) <sup>d</sup>	5.3	5.7	5.8	6.0
International tariff peaks (% of all tariff lines) <sup>e</sup>	8.4	8.7	9.1	9.3
Overall standard deviation of applied rates	14.1	10.3	10.4	10.4
Nuisance applied rates (% of all tariff lines) <sup>f</sup>	9.6	8.8	7.0	7.1

<sup>37</sup> Council Regulation (EEC) No. 2658/87, 23 July 1987 (OJ L 256, 7 September 1987). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1987:256:0001:0675:EN:PDF>

<sup>38</sup> European Commission Explanatory notes to the Combined Nomenclature of the European Union (2011/C 137/01), 6 May 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:137:FULL:EN:PDF>

<sup>39</sup> The latest version is contained in Commission Implementing Regulation (EU) No. 927/2012, 9 October 2012 (OJ L 304, 31 October 2012). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:304:FULL:EN:PDF>

<sup>40</sup> European Commission online information, "Online customs tariff database (TARIC)". Viewed at: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/tariff\\_aspects/customs\\_tariff/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/customs_tariff/index_en.htm).

	MFN applied			Final bound (2013)
	2008 <sup>a</sup>	2011 <sup>b</sup>	2013 <sup>c</sup>	
Number of lines	9,699	9,294	9,376	9,376
<i>Ad valorem</i>	8,720	8,319	8,370	8,372
Duty-free lines	2,451	2,319	2,312	2,246
Non- <i>ad valorem</i>	979	975	1,006	1,004
Specific	629	553	577	575
Compound	215	193	201	201
Alternate	74	59	58	58
Other	61	170	170	170

- a *Ad valorem* equivalents (AVEs) were estimated based on 2007 import data at the eight-digit tariff from Eurostat database. In case of unavailability, the *ad valorem* part is used for compound and alternate rates.
- b *Ad valorem* equivalents (AVEs) were estimated based on 2010 import data at the eight-digit tariff from Eurostat database. In case of unavailability, the *ad valorem* part is used for compound and alternate rates.
- c *Ad valorem* equivalents (AVEs) were estimated based on 2011 import data at the eight-digit tariff from Eurostat database. In case of unavailability, the *ad valorem* part is used for compound and alternate rates.
- d Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate (indicator 6).
- e International tariff peaks are defined as those exceeding 15%.
- f Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: All tariff calculations exclude in-quota lines. Year 2008 and 2011 tariff schedules are based on HS2007 nomenclature and Year 2012 schedule is based on HS2012.

Source: WTO Secretariat.

**Table 3.3 Summary statistics of MFN tariffs, 2013**

	Number of lines	Simple average (%)	Tariff range (%)	Standard deviation	Share of duty free lines (%)	Share of non- <i>ad valorem</i> tariffs (%)	Share of quotas (%)
<b>Total</b>	9,376	6.5	0-197	10.3	24.7	10.7	5.0
<b>HS 01-24</b>	2,440	14.7	0-197	17.4	14.9	38.9	18.6
<b>HS 25-97</b>	6,936	3.8	0-47.8	3.8	28.1	0.8	0.2
<b>By WTO category</b>							
<b>WTO agricultural products</b>	2,067	14.8	0-197	19.0	18.6	47.0	19.2
Animals and products thereof	351	20.4	0-192.1	24.1	15.1	67.5	35.3
Dairy products	152	31.7	1.5-164.8	21.6	0.0	98.7	31.6
Fruit, vegetables, and plants	501	13.3	0-197	14.6	11.6	17.4	13.0
Coffee and tea, cocoa and cocoa preparations	47	11.6	0-18.7	6.7	14.9	51.1	42.6
Cereals and preparations	230	18.1	0-94	13.8	5.2	84.4	28.7
Oils seeds, fats, oil and their products	174	7.5	0-154.1	17.1	35.6	6.9	0.0
Sugars and confectionary	44	25.4	0-135.3	28.4	0.0	93.2	22.7
Beverages, spirits, and tobacco	303	14.2	0-196.3	20.9	18.2	55.8	14.2
Cotton	6	0.0	0	0.0	100.0	0.0	0.0
Other agricultural products, n.e.s.	259	5.6	0-83.5	11.8	50.6	22.0	7.7
<b>WTO non-agricultural products</b>	7,309	4.4	0-26	4.3	26.4	0.5	1.0
Fish and fishery products	492	11.9	0-26	6.4	8.1	0.0	12.0



	Number of lines	Simple average (%)	Tariff range (%)	Standard deviation	Share of duty free lines (%)	Share of non- <i>ad valorem</i> tariffs (%)	Share of quotas (%)
Minerals and metals	1,447	2.0	0-12	2.5	50.6	0.7	0.5
Chemicals and photographic supplies	1,230	4.5	0-18.1	2.7	23.8	0.3	0.1
Wood, pulp, paper, and furniture	429	1.2	0-10	2.3	73.7	0.0	0.5
Textiles	850	6.6	0-12	2.4	1.9	0.1	0.2
Clothing	341	11.6	6.3-12	1.3	0.0	0.0	0.0
Leather, rubber, footwear, and travel goods	264	5.0	0-17	4.6	18.9	0.0	0.0
Non-electric machinery	881	1.9	0-9.7	1.4	20.9	0.0	0.0
Electric machinery	444	3.1	0-14	3.2	21.0	0.0	0.0
Transport equipment	248	5.1	0-22	5.1	12.1	0.0	0.0
Non-agricultural products, n.e.s.	634	2.6	0-14	2.1	25.6	3.2	0.0
Petroleum	49	3.0	0-4.7	1.8	24.5	0.0	0.0
<b>By ISIC sector<sup>a</sup></b>							
ISIC 1 – Agriculture, hunting, and fishing	633	8.6	0-143.1	12.8	34.3	20.1	10.6
ISIC 2 – Mining and quarrying	115	0.2	0-8	1.1	93.0	2.6	0.0
ISIC 3 – Manufacturing	8,627	6.4	0-197	10.2	23.0	10.2	4.6
<b>By stage of processing</b>							
First stage of processing	1,189	6.8	0-143.1	10.7	43.2	14.1	11.1
Semi-processed products	2,755	4.9	0-135.3	6.5	30.6	3.9	1.0
Fully processed products	5,432	7.3	0-197	11.7	17.6	13.5	5.7

a International Standard Industrial Classification (Rev.2). Electricity, gas and water are excluded (1 tariff line).

Note: Calculations for averages are based on the national tariff line level (8-digit), excluding in-quota rates. Tariff schedule is based on HS2012. *Ad valorem* equivalents (AVEs) were estimated based on 2011 extra-EU-27 import data at the 8-digit tariff from Eurostat database. In case of unavailability, the *ad valorem* part is used for compound and alternate rates.

Source: WTO Secretariat calculations, based on IDB database and Eurostat database.

3.38. The Secretariat used average unit values to estimate the *ad valorem* equivalents of non-*ad valorem* tariff rates. The data used to calculate import unit values are from Eurostat for 2011. The analysis excludes 273 lines for which AVEs could not be estimated.<sup>41</sup> In the context of this Review, the Commission expressed reservations about the Secretariat's methodology for estimating AVEs.<sup>42</sup>

<sup>41</sup> AVEs were not estimated for those lines with no or very low imports, or no entry prices; regarding compound or alternate tariffs, only the *ad valorem* component was used for the analysis.

<sup>42</sup> The Commission indicates that any calculation of AVEs has shortcomings that can lead to distortions in the characterization of the actual level of tariff protections. The Commission notes that it is therefore important to treat results of AVE calculations with great caution, bearing in mind that the result can be influenced by several elements, including: the base period and partners chosen; commodity prices; exchange rates; shocks in specific markets; treatment of mixed tariffs and tariff lines for which trade data are not available; and the extent to which preferential trade is included in the unit value calculation.

3.39. Around 11% of tariff lines are non-*ad valorem*, mostly on agricultural products (Table 3.2). Furthermore, the EU uses seasonal duties and duties that are reduced if a product's declared price is above a certain level (entry price system).<sup>43</sup> Entry prices apply on 28 tariff lines at the 8-digit level, including tomatoes, cucumbers, courgettes, citrus fruits, grapes, apricots, and plums (Table A3.1). The EU uses the "Meursing Table" to determine the customs tariffs for processed agricultural products based on what they are made of. These products include confectionary, cakes, and biscuits. Their tariffs are defined according to the level of milk fats and proteins, sugar, and starch they contain. The table results in thousands of possible combinations of tariffs.

3.40. On average, non-*ad valorem* rates continue to afford higher protection than *ad valorem* rates. The average AVE of non-*ad valorem* tariff rates is 24.5%, compared with 4.8% for *ad valorem* duties. Under the WTO definition, dairy is subject to the highest average tariff rate, followed by sugars and confectionary, live animals and their products, and cereals and preparations (Table 3.3). All rates above 100% are AVEs relating to agricultural goods, applying to, *inter alia*, prepared or preserved mushrooms (197% and 170%), citrus juice including orange juice and grape juice (196.3% and 165.3%), certain meats and edible meat offal (192.1% and 120.1%), goat meat (166.7%), whey (164.8%), olive oil (154.1% and 120.6%), and isoglucose (135.3%). Apart from agricultural products, non-*ad valorem* tariff rates apply on 35 tariff lines, including mostly glass and watches, watch and clock movements, and watch cases. The highest rates for non-agricultural products apply on motor vehicles (22%) and on fish (22-26%).

#### 3.1.4.2 WTO bound tariffs

3.41. All EU tariff lines are bound. Applied rates, in general, are at their bound rates (Table 3.2). The simple average bound tariff rate is 6.6%.

3.42. The WTO certified Schedule of Concessions reflecting the EU's enlargement from 12 to 15 member States became effective in October 2012.<sup>44</sup> The EU's commitments with respect to agricultural market access, domestic support, and export subsidies to reflect the enlargement from 15 to 27 member States have not yet been formally agreed in the WTO and consolidated in the EU's Schedule (section 2.3).

3.43. The EU is covered by the collective General Council waiver suspending the application of GATT binding disciplines to allow WTO Members to implement the HS 2007 and HS 2012 changes pending the incorporation of these changes into their schedules of concessions.<sup>45</sup> This waiver expires in December 2013.

#### 3.1.4.3 Tariff suspensions and tariff rate quotas

3.44. The Council may approve "autonomous" tariff suspensions and quotas on the basis of a proposal from the Commission. These measures permit the total or partial waiver of duties applicable to imported goods for an unlimited quantity (tariff suspension) or a limited quantity (tariff quotas). Tariff suspensions may be granted for products unavailable within the EU whereas tariff quotas for goods produced in insufficient quantities within the EU. According to the Commission, these measures allow enterprises to obtain supplies at a lower cost for a certain period, thus stimulating economic activity and improve competition in the EU. No tariff suspensions or quotas are granted for finished products.<sup>46</sup>

3.45. Member States transmit requests for autonomous tariff suspensions to the Commission. The requests are examined by the Commission with the aid of the Economic Tariff Questions Group representing the competent authorities of each member State. According to the Commission, an

<sup>43</sup> The rules for the application of the entry price for fruit and vegetables are laid down in Regulation (EC) No. 1580/2007, 21 December 2007 (OJ L 350, 31 December 2007).

<sup>44</sup> WTO document WT/Let/868, 30 October 2012.

<sup>45</sup> WTO documents WT/L/874 and WT/L/875, 14 December 2011.

<sup>46</sup> Some of the parts and components that are highly technical, sophisticated and used without major modification could be considered as "finished" products; however, tariff suspensions could be granted for those "finished" products as components in the final products, provided the added value of such an assembly operation is sufficiently high. Paragraph 2.5.3, European Commission Communication on autonomous tariff suspensions and quotas (2011/C 363/02), (OJ C 363, 13 December 2011). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:363:0006:0017:EN:PDF>.



increase in requests was registered during the recent economic recession in the EU.<sup>47</sup> In 2012, there were around 1,700 autonomous suspensions and 80 autonomous tariff quotas in force.

3.46. According to the Commission, as a general rule, autonomous tariff suspensions are opened for a period of five years, and are automatically prolonged if they are sufficiently used. The Commission notes that an early termination of these measures is possible if economic circumstances change; measures are reviewed regularly, and interested parties may request to delete them.<sup>48</sup> Products covered include basic chemicals, components for the microelectronics industry, and components for heavy and industrial machinery.

3.47. Autonomous" tariff rate quotas are allocated on the "first-come, first-served" basis. When the quotas of the year for the products in questions are used up, normal import duties will be applied.

3.48. The EU grants preferential tariff quotas in accordance with the unilateral or reciprocal trade agreements (Table A3.2). It also operates a number of quotas for agricultural goods (section 4.1).

### 3.1.5 Domestic taxes collected at the border

3.49. In the EU, value-added tax (VAT) is applied to both domestic and imported goods and services. For imported goods, VAT is assessed on the customs values plus duties, other charges, and incidental expenses. VAT on imports, in general, must be paid at the time of customs clearance. Goods are treated as imports for VAT purposes if they arrive from outside the EU (within the meaning of the VAT Directive) or via another EU country without having been released for free circulation. Imported goods are in free circulation once the applicable duties have been paid and the customs formalities complied with. However, traders need to cope with different import VAT rules depending on the member State of importation; there is no uniformity between member States with regard to the liability and different payment regimes applied.<sup>49</sup>

3.50. VAT rates differ across member States. The standard rate applied by member States must be at least 15%<sup>50</sup>, and member States may apply up to two reduced rates of at least 5% on 21 categories of goods and services listed in Annex III of the VAT Directive, including food, water, medicines, certain medical equipment, books, newspapers, periodicals, certain agricultural inputs, passenger transport, renovation and repairing of private dwellings, social services that do not fulfil the conditions for exemption, and admission to sporting events. In addition, there is a multitude of derogations on the application of zero rates, and super-reduced rates (lower than 5%), resulting in the application in member States of different combinations of rates.<sup>51</sup> Standard VAT rates cover about two thirds of total consumption, with the remainder subject to other rates.<sup>52</sup> The average VAT rate in the EU-27 is currently 21%.<sup>53</sup>

3.51. The VAT revenue ratio comprises actual VAT revenue collection divided by the theoretical standard VAT tax base (i.e. products at the VAT standard rate and the net final consumption). It is an indicator to describe the extent of exemptions, reduced rates, or tax evasion: a lower value suggests more applications of VAT exemption/reduction. The VAT revenue ratio for the EU member States in the last decade is shown in Table 3.4.

<sup>47</sup> Paragraph 2.4.4, European Commission Communication 2011/C 363/02, 13 December 2011.

<sup>48</sup> In exceptional cases where a continuation of a tariff suspension implies the lasting need in external supplies or it is too costly to invest for domestic supplies, the Commission may propose an amendment to the Common Customs Tariff. Paragraph 2.3.2, European Commission Communication 2011/C 363/02, 13 December 2011.

<sup>49</sup> Deloitte and Copenhagen Economics (2011).

<sup>50</sup> Council Directive 2010/88/EU, 7 December 2010 (OJ L 326, 10 December 2010).

<sup>51</sup> European Commission document taxud.c.1(2013)69398 – EN, "VAT Rates Applied in the member States of the European Union", 14 January 2013. Viewed at:

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/how\\_vat\\_works/rates/vat\\_rates\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf).

<sup>52</sup> European Commission document COM(2010) 695 final, 1 December 2010. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/common/consultations/tax/future\\_vat/com\(2010\)695\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/future_vat/com(2010)695_en.pdf).

<sup>53</sup> DG Taxation and Customs Union/Eurostat (2012).

Table 3.4 VAT revenue ratio, 2000-10

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Austria	0.62	0.62	0.63	0.61	0.60	0.60	0.59	0.61	0.61	0.61	0.60
Belgium	0.51	0.48	0.48	0.47	0.49	0.50	0.51	0.51	0.49	0.47	0.48
Bulgaria	0.52	0.52	0.45	0.53	0.63	0.66	0.72	0.69	0.76	0.64	0.66
Cyprus	0.73	0.75	0.66	0.68	0.75	0.82	0.88	0.91	0.92	0.80	0.79
Czech Republic	0.43	0.42	0.41	0.41	0.57	0.57	0.54	0.54	0.58	0.55	0.54
Denmark	0.61	0.61	0.60	0.60	0.60	0.63	0.65	0.65	0.63	0.59	0.58
Estonia	0.70	0.69	0.70	0.69	0.65	0.76	0.81	0.80	0.67	0.65	0.68
Finland	0.60	0.59	0.58	0.60	0.59	0.61	0.61	0.60	0.58	0.55	0.52
France	0.53	0.52	0.51	0.50	0.51	0.52	0.51	0.51	0.50	0.46	0.47
Germany	0.60	0.58	0.56	0.56	0.55	0.55	0.57	0.55	0.55	0.56	0.55
Greece	0.48	0.51	0.50	0.48	0.47	0.45	0.47	0.49	0.46	0.39	0.38
Hungary	0.53	0.48	0.45	0.46	0.52	0.49	0.55	0.59	0.57	0.50	0.53
Ireland	0.62	0.61	0.61	0.60	0.64	0.67	0.67	0.63	0.56	0.47	0.48
Italy	0.45	0.43	0.43	0.41	0.40	0.40	0.43	0.43	0.40	0.38	0.41
Latvia	0.51	0.49	0.48	0.52	0.51	0.59	0.65	0.63	0.49	0.38	0.42
Lithuania	0.52	0.51	0.52	0.48	0.45	0.52	0.55	0.61	0.58	0.47	0.49
Luxembourg	0.74	0.74	0.74	0.79	0.85	0.90	0.90	0.94	0.98	0.97	0.97
Malta	0.50	0.53	0.55	0.55	0.51	0.61	0.58	0.58	0.57	0.56	0.57
Netherlands	0.60	0.59	0.57	0.57	0.58	0.58	0.60	0.62	0.60	0.54	0.57
Poland	0.42	0.41	0.42	0.42	0.44	0.47	0.51	0.54	0.50	0.47	0.49
Portugal	0.60	0.59	0.53	0.53	0.53	0.52	0.53	0.53	0.53	0.44	0.47
Romania	0.43	0.41	0.49	0.48	0.45	0.54	0.54	0.57	0.56	0.47	0.44
Slovakia	0.44	0.44	0.43	0.54	0.60	0.61	0.58	0.53	0.54	0.48	0.46
Slovenia	0.67	0.65	0.64	0.64	0.65	0.67	0.67	0.69	0.68	0.63	0.61
Spain	0.55	0.53	0.52	0.54	0.56	0.59	0.59	0.54	0.45	0.35	0.41
Sweden	0.52	0.52	0.53	0.52	0.53	0.55	0.55	0.57	0.58	0.57	0.59
United Kingdom	0.49	0.48	0.48	0.50	0.49	0.48	0.48	0.47	0.46	0.46	0.47

Source: DG Taxation and Customs Union/Eurostat (2012), *Taxation trends in the European Union*. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/gen\\_info/economic\\_analysis/tax\\_structures/2012/report.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_structures/2012/report.pdf); and Eurostat online database. Viewed at <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> [February 2013].

3.52. Differences in VAT rates may lead to additional compliance costs for traders.<sup>54</sup> An economic evaluation carried out by the Commission also confirmed that the use of reduced rates is often not the most suitable instrument for pursuing policy objectives, particularly for ensuring redistribution to poor households or encouraging the consumption of a good that is deemed socially desirable. In fact, the existing application of reduced rates translates into significant subsidies.<sup>55</sup>

3.53. In December 2011, the Commission adopted a Communication on the future of VAT, which called for "a more efficient VAT system", through reviewing the rate structure and more restriction on the application of reduced rates.<sup>56</sup> If all reduced rates were removed, the standard rate could in certain member States theoretically be reduced by up to 7.5%, without any impact on overall revenue.<sup>57</sup>

3.54. Domestic and imported alcoholic beverages, manufactured tobacco products, energy products (e.g. petrol, gas oil, natural gas) and electricity are subject to excise duties in all EU member States.<sup>58</sup> Excise duty rates applied on these products vary across member States, but must be at least equal to the minimum rates established in EU legislation, which also defines the product categories subject to excise duties, and the basis on which they must be calculated.<sup>59</sup> A

<sup>54</sup> European Commission document COM(2011) 851 final, 6 December 2011. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/key\\_documents/communications/com\\_2011\\_851\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/communications/com_2011_851_en.pdf).

<sup>55</sup> European Commission document MEMO/11/874, "Questions and Answers: Value Added Tax", 6 December 2011. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-11-874\\_en.pdf](http://europa.eu/rapid/press-release_MEMO-11-874_en.pdf).

<sup>56</sup> European Commission document COM(2011) 851 final, 6 December 2011. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/key\\_documents/communications/com\\_2011\\_851\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/communications/com_2011_851_en.pdf).

<sup>57</sup> European Commission document SPEECH/11/852, "Commissioner Šemeta's speaking points on the Strategy for the future of VAT", 6 December 2011. Viewed at: [http://europa.eu/rapid/press-release\\_SPEECH-11-852\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-11-852_en.htm?locale=en).

<sup>58</sup> In contrast to VAT, excise duties are mainly specific taxes.

<sup>59</sup> Council Directive 92/83/EEC, 19 October 1992 (OJ L 316, 31 October 1992); Council Directive 92/84/EEC, 19 October 1992 (OJ L 316, 31 October 1992); Commission Regulation (EC) No 3199/93,

Council Directive adopted in February 2010 gradually increases minimum excise duty rates on cigarettes and fine-cut tobacco; the Directive modified the definitions of manufactured tobacco products and established transition periods for certain member States.<sup>60</sup> EU member States have not yet agreed to increase the minimum rates on alcoholic beverage in line with inflation, as proposed by the Commission in 2006.<sup>61</sup> In 2011 the Commission proposed a revision of the legislation on taxation of energy products and electricity,<sup>62</sup> but no legal act has been adopted by the Council. The Excise Duty Tables published by the Commission contain the tax rates levied by member States and tax receipts from excise duties on alcoholic beverages, manufactured tobacco (quantities released for consumption are also published) and energy products and electricity.<sup>63</sup>

3.55. Under Council Directive 92/83/EEC, member States may levy reduced excise duty rates on beer and ethyl alcohol produced by small domestic breweries and distilleries, as defined in the Directive. Reduced rates may be lower than the minimum rates defined in EU legislation, but not less than half the rate of the standard excise duty on these products. According to the Commission, although the Directive is silent on whether similar reduced rates should be granted on beer and ethyl alcohol from outside the EU, in practice similar tax reductions are provided in accordance with GATT commitments, usually on condition of a certificate of eligibility issued by the relevant national authority where the brewery or distillery is established.<sup>64</sup>

3.56. The Commission notes that no taxes other than VAT and excise duties are payable at the EU external border.

### 3.1.6 Import control and restrictions

3.57. The EU does not maintain quantitative restrictions on imports from WTO Members and countries with bilateral agreements. As a result of Russia's accession to the WTO, quotas of certain steel products were abolished on 22 August 2012. Import quotas are applied to certain steel products from Kazakhstan, and certain textiles from Belarus and the Democratic People's Republic of Korea. The EU has a bilateral Agreement on Trade in Textiles with Serbia (dated 31 March 2005) which foresees the possibility to introduce quantitative restrictions on imports of textile products.<sup>65</sup> According to the Commission, this Agreement will lapse upon the entry into force of the Stabilisation and Association Agreement between the EU and Serbia.

3.58. The EU import licensing system is based on the premise that no import licences are required unless specific products are subject to quantitative restrictions, safeguard measures or import surveillance. Import surveillance is administered through automatic licensing; the Commission notes that the licensing procedure for products under surveillance is for statistical purposes and improves the "transparency of import trends, but with no intention of limiting market access".<sup>66</sup> The prior surveillance of imports of certain iron and steel products expired on 31 December 2012. According to the Commission, there are no import surveillance schemes in force since 1 January 2013.

3.59. For importation of products subject to import quotas, import licences must be sought from the competent authorities of the member States in cooperation with the Commission.<sup>67</sup> The

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22 November 1993(OJ L 288, 23 November 1993); Council Directive 95/59/EC, 27 November 1995 (OJ L 291, 6 December 1995); Council Directive 92/79/EEC, 19 October 1992 (OJ L 316, 31 October 1992); Council Directive 92/80/EEC, 19 October 1992 (OJ L 316, 31 October 1992); and Council Directive 2003/96/EC, 27 October 2003 (OJ L 283, 31 October 2003).

<sup>60</sup> Council Directive 2010/12/EU, 16 February 2010 (OJ L 50, 27 February 2010).

<sup>61</sup> European Commission document COM(2006) 486 final, 8 September 2006. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/excise\\_duties/alcoholic\\_beverages/com\(2006\)486\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/excise_duties/alcoholic_beverages/com(2006)486_en.pdf).

<sup>62</sup> European Commission document COM(2011) 169 final, 13 April 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0169:FIN:EN:PDF>.

<sup>63</sup> European Commission document Ref 1036, Excise Duty Tables (Parts I-III), January 2013. Viewed at: [http://ec.europa.eu/taxation\\_customs/taxation/excise\\_duties/alcoholic\\_beverages/rates/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/excise_duties/alcoholic_beverages/rates/index_en.htm).

<sup>64</sup> The member States that maintain reduced excise duty rates for small domestic breweries or distilleries are Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Latvia, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, and the United Kingdom.

<sup>65</sup> WTO document, G/LIC/N/3/EU/1, 25 September 2012.

<sup>66</sup> WTO document G/LIC/N/3/EU/1, 25 September 2012.

<sup>67</sup> The competent authorities in the member States must transmit all licence applications to the European Commission, and will only issue a licence after the application is approved by the Commission.

licences are valid throughout the EU, except in the case of a quota being limited to certain member States. Quotas are centrally managed by the Commission. The EU made information on current level of quota utilization available online.<sup>68</sup> A double-checking mechanism is in place when administering import licences.<sup>69</sup>

3.60. Import licensing for bananas was abolished on 1 January 2012; licensing requirements for a number of agricultural products were abolished on 24 May 2012 with entry into force of Regulation No. 418/2012.<sup>70</sup> Pursuant to Article 130(1) of Regulation No. 1234/2007, the Commission may impose licensing requirements on imports of certain agricultural products. Products subject to licensing include: cereals and rice, beef and veal, sheepmeat and goatmeat, milk and milk products, sugar, olives and table olives, some vegetables and processed vegetables, and ethyl alcohol of agricultural origin.<sup>71</sup> The Commission indicated that the import licensing scheme for agricultural products is for statistical purposes, and administered through automatic licensing.<sup>72</sup>

3.61. Import licences are not subject to fees and are not transferable. There is no penalty for non-utilization of an import licence or portion of it. However, for import licences for agricultural products, importers must lodge a security to apply for an import licence; the amount of the security is product specific, and is forfeit if the product in question is not imported or only partially imported during the validity period of the licence.

3.62. The EU maintains import restrictions on, *inter alia*, security, technical, sanitary, phytosanitary, and environmental grounds. Some such controls/restrictions stem from treaties and international conventions to which it, and/or its member States, are party, for instance the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The EU has entered into bilateral "Forest Law Enforcement Governance and Trade Voluntary Partnership Agreements" with a number of countries, through which imports of timber and timber products from such countries will be subject to a licensing scheme.

### 3.1.7 Contingency measures

#### 3.1.7.1 Overview

3.63. Contingency measures, which are called "trade defence instruments" by the Commission and are part of the Common Commerce Policy (CCP), are the exclusive competence of the EU. Industries within the EU may lodge a complaint with the Commission which may then initiate an investigation. If the investigation determines there is dumping or subsidies in production and/or export of the products concerned, causality between the imports and injury of the EU's industries, and that the imposition of contingency measures is not against the EU's interests, the Commission may propose contingency measures to the Council. The adoption of contingency measures is subject to the comitology rules that entered into force in March 2011 (section 2.1), and requires a positive opinion voted by qualified majority of a committee composed of member State representatives.

3.64. In 2012, the Regulation No. 1225/2009 (known as "Basic Anti-dumping Regulation") was amended twice (September and December 2012) reflecting the rulings of the WTO Dispute Settlement Body<sup>73</sup> and of the European Court of Justice.<sup>74</sup> These amendments are related to the

<sup>68</sup> The websites are: EC online information, "Système Intégré de Gestion de Licences". Viewed at: <http://trade.ec.europa.eu/sigl/> (for imports of textiles, clothing, footwear and steel).

<sup>69</sup> The double-checking mechanism operates thus: when importers apply for import licences, they must submit the original of the corresponding export licence plus other relevant documents.

<sup>70</sup> The agricultural products no longer subject to import licensing are explained in Article 3 of the Regulation. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:130:0001:0013:EN:PDF>.

<sup>71</sup> Annex II, Commission Regulation (EC) No. 376/2008, 23 April 2008 (OJ L 114/3, 26 April 2008). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:114:0003:0056:en:PDF>

<sup>72</sup> WTO document G/LIC/N/3/EU/1, 25 September 2012.

<sup>73</sup> WTO document G/ADP/N/1/EU/1, 16 October 2012. See also Regulation (EU) No. 765/2012 of the European Parliament and of the Council, 13 June 2012 (OJ L 237, 3 September 2012). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:237:0001:0002:EN:PDF>.

<sup>74</sup> WTO document G/ADP/N/1/EU/2, 17 January 2013. See also Regulation (EU) No. 1168/2012 of the European Parliament and of the Council, 12 December 2012 (OJ L 344, 14 December 2012), viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/december/tradoc\\_150149.amend.en.L344-2012.pdf](http://trade.ec.europa.eu/doclib/docs/2012/december/tradoc_150149.amend.en.L344-2012.pdf).

treatment of exporters from non-market economy countries. According to the Commission, the amendment codifies the practice of the Commission to resort to sampling when investigating claims for market economy treatment made by exporters located in economies in transition; the amendment also clarifies the methodology to be followed to establish the duty rate applicable to non-sampled cooperating exporting producers. Suppliers which are legally distinct from other suppliers or from the State may nevertheless be considered as a single entity for the purpose of specifying the duty. In this examination, account may be taken of factors such as the existence of structural or corporate links between the suppliers and the State or between suppliers, control or material influence by the State in respect of pricing and output, or the economic structure of the supplying country. Both amendments have been notified to the WTO. According to the Commission, economies in transition include China, Viet Nam, Kazakhstan, Albania, Armenia, Georgia, Kyrgyzstan, Moldova and Mongolia.<sup>75</sup>

3.65. The Commission launched an initiative to modernize trade defence instruments in October 2011. The exercise covers the anti-dumping and countervailing instruments, with the aim of improving the efficiency of the instruments and effectiveness of actual anti-dumping and countervailing measures imposed. Safeguards are not part of the initiative because the criteria and procedure to impose safeguard measures are very different from those of the AD and AS instruments. The modernization exercise will include a communication, guidelines and a legislative proposal. It is planned to release all three elements in spring 2013. The legislative proposal will then follow the ordinary legislative procedure during 2013 and 2014. The Commission indicated that changes in practice which do not require a legislative change are expected to be implemented during 2013, e.g. changes to facilitate cooperation and guidelines.

3.66. According to the Commission, about 0.3% of total volume of imports into the EU was subject to contingency measures in 2011, and 0.2% in 2012.<sup>76</sup> During the last five years, the iron and steel industry, and chemical industries were the sectors most affected by contingency measures adopted in the EU (Table A3.3).

### 3.1.7.2 Anti-dumping and countervailing

3.67. The legislative framework for anti-dumping (AD) and countervailing (CV) measures in the EU remained largely unchanged during the period under review. The main EU legislation is contained in Regulation No. 1225/2009 on anti-dumping and Regulation No. 597/2009 on countervailing (known as "Anti-subsidy Regulation"). The Commission maintains websites, which are available to the public, on information on investigations,<sup>77</sup> and on notices and adopted measures.<sup>78</sup>

3.68. Provisional measures may be imposed no earlier than 60 days from the initiation of the proceeding. EU applies the "lesser duty" principle, i.e. the amount of the duty should be the lesser of the established dumping margin and the level necessary to "remove the injury". Provisional duties must be secured by a guarantee; upon provision of the guarantee, imports of the product concerned will be released for free circulation in the EU. Provisional duties may be imposed for six months up to a maximum of nine months.

3.69. Definitive anti-dumping or countervailing measures are usually imposed for a fixed period of five years, subject to expiry reviews; if no expiry review is requested, the measure expires automatically. The Commission indicated that the average duration of AD measures in the EU is seven years; approximately 17% of AD measures remain in place for more than ten years. According to the European Commissioner for Trade, the Commission is to consider "ways to make sure that the levels of the duties are still appropriate after such a long time".<sup>79</sup>

<sup>75</sup> European Commission online information, "Anti-dumping investigation". Viewed at: <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence/anti-dumping/investigations/> [16.02.13].

<sup>76</sup> Percentage number in 2012 is provisional.

<sup>77</sup> European Commission online information, "Trade Defence: Investigation". Viewed at: <http://trade.ec.europa.eu/tdi/index.cfm>.

<sup>78</sup> European Commission online information, "Trade Defence: Notice board". Viewed at: <http://trade.ec.europa.eu/tdi/notices.cfm>.

<sup>79</sup> De Gucht (2012).



3.70. During the period under review, 14 anti-dumping measures that lasted for longer than 10 years affecting 13 trading partners were terminated or expired. For instance, AD measures on imports of potassium chloride from Belarus and Russia, initially imposed in October 1992, were terminated in July 2011; the extension of AD measures on imports of polyethylene terephthalate (PET) from Chinese Taipei, India, Indonesia, Korea, Malaysia and Thailand expired in February 2012 (Table A3.3).

3.71. EU industries may request the Commission to hold expiry reviews no later than three months prior to the expiry of a measure.<sup>80</sup> In the last five years (2008–2012), 61 requests were submitted to the Commission for expiry reviews, accounting for 60% of 101 measures due to expire during the period. In 54 cases (53%), an expiry review was initiated. An expiry review can result in either the repeal or continuation of the duties in force, but not in a change in the level or form of the duties.<sup>81</sup> If the expiry review determines the measure should be retained, the duties normally remain in force for another five years. For the period 2008 through 2012, 40 measures were extended – some as a result of expiry reviews initiated prior to this period.

3.72. AD or CV measures may be terminated before their expiry. After the measures have been imposed for longer than one year, interim reviews may be requested by any exporter, importer, or by EU producers.<sup>82</sup> Anti-dumping measures against certain trading partners may be terminated in an expiry review or an interim review while being retained for others. For instance, anti-dumping duty on ferro-silicon imports from Russia was terminated on 25 January 2012 whereas the duty remained on imports from China, Egypt, and Kazakhstan.<sup>83</sup> The threshold for terminating AD measures is where the dumping margin is determined to be less than 2% of the export price.<sup>84</sup>

3.73. During the period under review, the EU initiated 30 new AD investigations, the same number as in the last review period. Not all investigations resulted in the imposition of definitive AD measures. For instance, less than 60% of investigations initiated in the period 2009-10 led to definitive measures being imposed (Table A3.3). Eleven new definitive measures were adopted in 2011, up from six in 2010. Three new definitive measures were imposed in 2012 (Table 3.5).

**Table 3.5 Anti-dumping investigations and measures imposed, 2008-12<sup>a</sup>**

	2008	2009	2010	2011	2012
Investigation initiations	18	15	15	17	13
Provisional measures	5	9	9	10	8
Definitive measures	16	9	6	11	3
Expired measures <sup>b</sup>	2	3	14	13	10
Confirmation of measure following expiry review	8	5	10	7	9
Termination of measure following expiry review	5	0	1	3	4

a As at 31 December 2012.

b Measures that expired automatically after their five-year imposition, not include the extended measures that automatically expired after the extension.

Source: WTO Secretariat; and European Commission online information. Viewed at: <http://trade.ec.europa.eu/tdi/notices.cfm>.

3.74. At the end 2012, the EU had 102 AD measures in force, affecting 20 trading partners (Table A3.3). The majority of AD measures in force in recent years were on imports from Asia, in particular China. Over the past five years, Asia accounted for 74% of the AD measures imposed, with other European countries outside the EU accounting for 17% (Chart 3.1 and Table A3.4).

<sup>80</sup> The expiry reviews may be initiated on the Commission's own initiatives.

<sup>81</sup> Changes in the level or form of the contingency measures can be done through interim reviews.

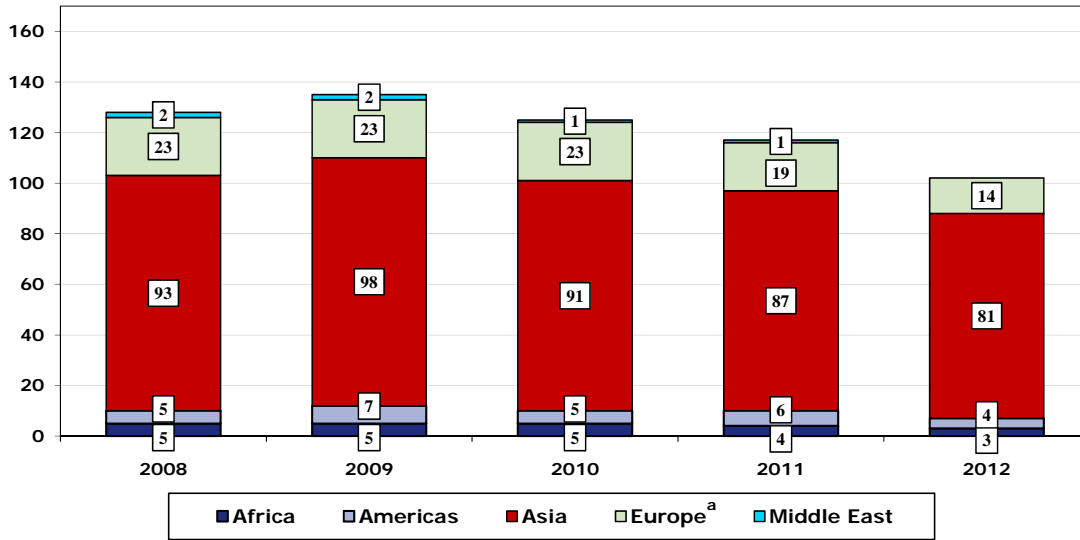
<sup>82</sup> Interim review may also be carried out on the initiative of the Commission or at the request of member States. See Article 11.3 of the Basic Anti-dumping Regulation.

<sup>83</sup> WTO document G/ADP/N/230/EU, 4 September 2012.

<sup>84</sup> Article 9(3), Council Regulation (EC) No. 1225/2009, 30 November 2009 (OJ L 343/51, 22 December 2009).

**Chart 3.1 Anti-dumping measures in force, by region, 2008-12**

Number of measures



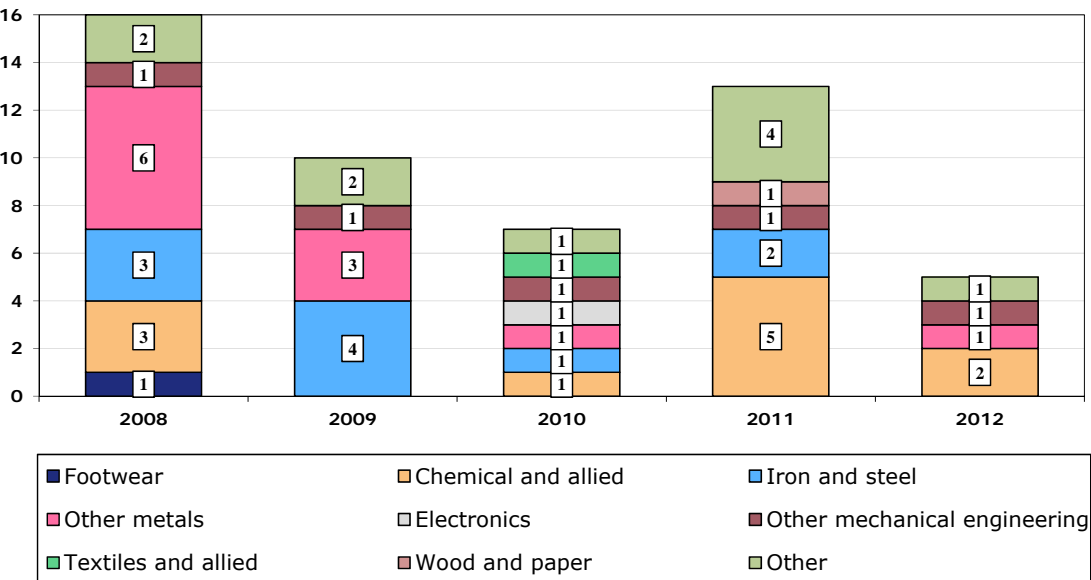
a Other European countries outside the EU.

Source: Information provided by the European Commission.

3.75. In terms of sectors affected by AD measures imposed over the last five years, chemical and other metals (e.g. aluminium foil, ferro-silicon, tungsten electrodes, etc.) accounted for 21% each, followed by both iron and steel with 19% and other sectors (such as agri-food products (sweetcorn, citrus fruit, strawberries), plastic bags, salmon, trout, biodiesel, glass fibre fabrics, and magnesia bricks) with 19% combined and followed by mechanical engineering with 12% (Chart 3.2).

**Chart 3.2 Anti-dumping measures imposed, by product, 2008-12**

Number of measures



Source: Information provided by the European Commission.

3.76. Some of the highest definitive AD duties that resulted from original investigations or reviews between June 2010 and June 2012 concern synthetic fibre ropes (82%) from India, polyethylene

terephthalate (148.3%) from Korea,<sup>85</sup> stainless steel seamless pipes and tubes (71.9%) from China, and certain molybdenum wires (64.3%) from China and Malaysia.<sup>86</sup> Among all the definitive anti-dumping duties in force, the highest *ad valorem* duties apply to stainless steel fasteners from Viet Nam (up to 7.7%).

3.77. Initiations of countervailing investigations have slightly increased since the previous review. During 2011-12, two new definitive measures and one provisional measure were imposed (Table 3.6).

**Table 3.6 Countervailing investigations and measures imposed, 2008-12<sup>a</sup>**

	2008	2009	2010	2011	2012
Investigation initiations	2	6	3	4	6
Provisional measures	0	1	4	0	1
Definitive measures	0	1	3	2	0
Expired measures <sup>b</sup>	0	1	0	3	0
Confirmation of measure following expiry review	1	0	0	0	0
Termination of measure following expiry review	0	0	0	1	0

a As at 31 December 2012.

b Measures that expired automatically after their five-year imposition, not including the extended measures that automatically expired after the extension.

Source: WTO Secretariat; and European Commission online information. Viewed at: <http://trade.ec.europa.eu/tdi/notices.cfm>.

3.78. Newly opened investigations in 2012 covered biofuels, steel products, solar panels, and bicycles. There are seven countervailing measures in force; some countervailing measures that had been extended before, such as CV measures against PET film from Brazil, India, and Israel, were terminated during this review period (Table A3.3).

3.79. The EU does not impose AD or CV measures on imports from Iceland, Liechtenstein or Norway, except for fish and other goods that are outside the scope of the European Economic Area.

### 3.1.7.3 Safeguards

3.80. No safeguard measures have been applied since 2005.

3.81. There was no change in the legislative framework for safeguard measures in the EU during the period under review. Regulation No. 260/2009 contains the general EU rules on safeguards<sup>87</sup> which apply to imports from most WTO Members outside the EU. For imports from some other trading partners (mostly non-WTO Members), safeguards are subject to Regulation No. 625/2009.<sup>88</sup> Rules on safeguards on imports of textile products are contained in Regulation No. 517/94.<sup>89</sup> Regulation No. 427/2003 governs the imposition of transitional product-specific safeguards on imports from China,<sup>90</sup> and will expire in December 2013.<sup>91</sup>

3.82. The Commission is in charge of conducting safeguard investigations in cooperation with member States. The adoption of definitive safeguard measures is not subject to the standard regime under the new "comitology" rules; the adoption of definitive safeguard measures requires a

<sup>85</sup> The measure on PET from Korea was terminated on 28 February 2012.

<sup>86</sup> Only AD duties in the form of *ad valorem* duties were considered. See WTO documents G/ADP/N/209/EEC, 28 March 2011; G/ADP/N/216/EEC, 14 October 2011; G/ADP/N/223/EU, 20 April 2012; and G/ADP/N/230/EU, 4 September 2012.

<sup>87</sup> Council Regulation (EC) No. 260/2009, 26 February 2009 (OJ L 84, 31 March 2009).

<sup>88</sup> Council Regulation (EC) No. 625/2009, 7 July 2009 on common rules for imports from certain third countries, OJ L 185, 17 July 2009. Annex I of which lists the following "Armenia; Azerbaijan; Belarus; Kazakhstan; North Korea; Russia; Tajikistan; Turkmenistan; Uzbekistan; Vietnam".

<sup>89</sup> Council Regulation (EC) No 517/94, 7 March 1994 as amended. Imports of textiles produced or originating in the countries listed in Annex IV are subject to the annual quantitative limits. Annex IV of the Regulation lists the following "North Korea".

<sup>90</sup> Council Regulation (EC) No. 427/2003, 3 March 2003 (OJ L 65, 8 March 2003).

<sup>91</sup> European Commission online information, "Safeguards". Viewed at: <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence/safeguards/> [17.02.13].



positive opinion voted by qualified majority of a committee composed of member State representatives, as opposed to general "comitology" rules which require a qualified majority to reverse a Commission proposal to adopt AD/CV measures. Under the EU safeguard legislation, the Commission may decide to impose surveillance if the "trend in imports of a product originating in a third country threatens to cause injury to EU producers". Since the last TPR of the EU, there was one import surveillance measure in force, on steel products, which expired on 31 December 2012 (section 3.1.6).

3.83. Recent applied/concluded free trade agreements (FTAs), as well as the recent reformed General Scheme of Preference (GSP), also contain provisions on safeguards. The implementing regulations with regards to the safeguard provisions in the FTAs with Korea and with Central America are expected to enter into force in 2013 (section 2.4). The Commission indicates that safeguards measures in accordance with provisions in FTAs or GSP have not applied to any cases.

### 3.1.8 Technical regulations and standards

3.84. Technical regulations and conformity assessment procedures are adopted at EU level and at the level of its member States, i.e. national level. A large amount of legislation on technical requirements and conformity assessment has been harmonized at EU level. According to the Commission, the harmonization legislation assures the free movement of goods and a high level of health, safety, environmental and consumer protection within the single market. A significant disparity between non-harmonized requirements across member States that impedes free movement or the need to regulate new policy areas or emerging risks where little or no national legislation exists are the most common reasons for adopting harmonization legislation at EU level.<sup>92</sup> The Commission does not have accurate numbers of products that are not subject to non-harmonized rules.<sup>93</sup>

3.85. The Regulation (EC) No. 764/2008 provides procedures relating to the application of member States' technical requirements, and requires the Commission to publish "a non-exhaustive list of products which are not subject to Community harmonization legislation".<sup>94</sup> Directive 98/34/EC obliges member States to notify the Commission and other member States of any draft technical regulation concerning any product together with a statement of the grounds which make the enactment of that regulation necessary.<sup>95</sup> This notification procedure has existed since the early 1980s.

3.86. In principle, EU-produced and imported goods that are not covered by EU harmonizing legislation and have been lawfully placed on the market of a member State can be marketed in another member State, even if they do not comply with the technical regulations of the member State of destination ("mutual recognition" principle, as established in the Regulation (EC) No. 764/2008). The only exceptions to this principle are restrictions introduced for reasons specified in Article 36 of the TFEU, or for overriding reasons of public interest that are proportionate to the aim pursued. According to the Commission, the most common justification for restrictions on the free movement of goods is related to the protection of health and life of humans, animals and plants. As recognized by the Commission, "technical obstacles to the free movement of goods within the EU are still widespread," and "those rules apply without distinction to all products, foreign and domestic alike".<sup>96</sup> A number of procedures exist to support the

<sup>92</sup> European Commission Staff Working Document, SWD(2013) 33 final, 13 February 2013. Viewed at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=swd:2013:0033\(51\):FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=swd:2013:0033(51):FIN:EN:PDF).

<sup>93</sup> In 2007, the Commission estimated based on then existing data that around 25% of the volume of intra-EU trade in manufactured products is not covered by harmonized rules; however the Commission also noted that this estimate is outdated due to the continuous removal of technical barriers through harmonization legislation. For details see European Commission Staff Working Document SEC(2007) 112, 14 February 2007 and the Impact Assessment accompanying the legislative proposal leading to the adoption of Regulation No. 764/2008, Section 1.5 at pp. 10-11. Viewed at: [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2007/sec\\_2007\\_0112\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2007/sec_2007_0112_en.pdf).

<sup>94</sup> The list can be consulted on European Commission online information, "DG Enterprise: Mutual recognition". Viewed at: <http://ec.europa.eu/enterprise/intsub/a12/>.

<sup>95</sup> Directive 98/34/EC of the European Parliament and of the Council, 22 June 1998 (OJ L 24, 21 July 1998). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1998L0034:20070101:EN:PDF>.

<sup>96</sup> European Commission document COM(2012) 292 final, 15 June 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0292:FIN:EN:PDF>.

Commission's monitoring of member States' compliance with their obligations under the TFEU and EU legislation. These procedures, which may eventually culminate in formal infringement proceedings and actions against the member States concerned before the Court of Justice of the European Union, aim to ensure the correct application of EU law and to eliminate unjustified restrictions to the free movement of goods.

3.87. Member States that use existing technical regulations to restrict market access for products lawfully marketed in another member State must justify their position with technical or scientific evidence, and must grant economic operators affected by the restriction an opportunity to provide comments.

3.88. Between the entry into force of Regulation (EC) No. 764/2008 on 13 May 2009 and 31 December 2011, the Commission received 1,524 notifications from seven member States denying within their territory the marketing of non-harmonized products lawfully marketed in other member States.<sup>97</sup> The notifications cover articles of precious metals, foodstuffs (or food additives/medicines), energy drinks and electrical equipment.

3.89. The Commission has overall responsibility for the implementation and administration of the TBT Agreement. The TBT enquiry point for EU legislation is the Directorate-General for Enterprise and Industry of the European Commission. Member States have designated TBT enquiry points for national legislation.

3.90. The EU notified 154 technical regulations and conformity assessment procedures to the WTO in the period from January 2011 to February 2013. The notifications cover, *inter alia*, household appliances, electric and electronic equipment, biocidal products, machinery, motor vehicles and parts, measuring devices, chemicals, food, cosmetics, and textile products. The notifications normally specify a comment period of at least 60 days and a proposed date of adoption after the expiry of the comment period.<sup>98</sup> During the period under review, the EU submitted a large number of addenda, providing additional information on the adoption, entry into force, and content of the final text of previously notified TBT measures.

3.91. Individual member States notified 97 technical regulations and conformity assessment procedures during the period under review. France accounted for the largest share with 25%, followed by the Czech Republic with 22%, Sweden (18%), Denmark (6%), Lithuania (5%), Finland, Hungary, Italy, and Slovenia (4% each). Estonia, Germany, the Netherlands, and the United Kingdom also made notifications. According to the Commission, the EU replied, on behalf of its member States, to other WTO Members' comments regarding notified measures proposed or adopted in individual member States.

3.92. In the context of the last TPR of the EU, some WTO Members were concerned that the EU's technical regulations and conformity assessment procedures would create unnecessary obstacles to trade such as the compliance overburdens on foreign small-and-medium-sized enterprises.<sup>99</sup> In response, the EU indicated that its regulations, most of which are subject to an impact assessment, are developed according to a transparent process allowing ample opportunity for interested parties from other WTO Members to participate and make their views known, and are largely based on relevant international standards. Moreover, regulatory impact assessments contain a specific "SME test" that analyses in detail the effects of the legislative proposals on SMEs.<sup>100</sup> The Commission pointed out that several measures were taken to mitigate the compliance burdens on SMEs (e.g. reduced registration or conformity assessment fees, simplified administrative requirements, etc.). The EU also provides technical assistance to assist developing countries meet regulatory requirements on bilateral and multilateral bases. Between January 2011 and February 2013, WTO Members raised concerns in the TBT Committee over several measures proposed or adopted by the EU or its individual member States (Table 3.7).

<sup>97</sup> 1,378 notifications were submitted by one member State, and concern articles of precious metals. In the opinion of the Commission, member States do not notify all decisions under Article 6(2) and 7 of the Regulation they take. See European Commission document COM(2012) 292 final, 15 June 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0292:FIN:EN:PD.F>

<sup>98</sup> According to the Commission, the EU notifies draft measures to the WTO once a complete text of the measure is available, but at a stage when comments can be taken into account.

<sup>99</sup> WTO document WT/TPR/M/248/Add.1, 30 August 2011.

<sup>100</sup> European Commission online information, "DG-Enterprise: Small and medium-sized enterprises test". Viewed at: [http://ec.europa.eu/enterprise/policies/sme/small-business-act/sme-test/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/small-business-act/sme-test/index_en.htm).

**Table 3.7 Specific trade concerns over EU TBTs, January 2011-February 2013**

Issue	WTO reference documents <sup>a</sup>	Member(s) concerned	First raised
EU restriction on the use of certain hazardous substances in electrical and electronic equipment	G/TBT/Notif.00/310/Corr.1	Australia, Canada, China, Israel, Japan, Jordan, Korea, Malaysia, Mexico, Thailand, Egypt, United States, Bolivarian Republic of Venezuela	31/03/1999
Regulation on certain wine sector products	G/TBT/W/290	Argentina, Australia, Plurinational State of Bolivia, Brazil, Canada, Chile, Mexico, New Zealand, Paraguay, Peru, South Africa, United States, Uruguay	01/10/1999
Regulation on the registration, evaluation and authorization of chemicals (REACH)	G/TBT/W/289	Argentina, Australia, Botswana, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, India, Indonesia, Israel, Japan, Korea, Kuwait, Malaysia, Mexico, Pakistan, Philippines, Qatar, Saudi Arabia, Singapore, South Africa, Switzerland, Thailand, United States, Uruguay	02/11/2005
Toys	G/TBT/N/EEC/184/Add.1	China, Korea	20/03/2008
Accreditation and market surveillance relating to the marketing of products	G/TBT/N/EEC/152	Australia, Korea, Thailand, United States	25/06/2009
Dairy regulation (Italy)	G/TBT/N/ITA/13	Australia, New Zealand	24/03/2010
Registration on traditional herbal medicinal products	G/TBT/M/56	China, Ecuador, India	23/06/2010
France – The National Commitment for the Environment (Grenelle 2 Law)	G/TBT/M/54	Argentina, Cuba, India, Korea, South Africa, Uruguay	15/06/2011
Renewable Energy Directive	G/TBT/M/54	Argentina, Indonesia, United States	15/06/2011
Ecodesign requirements for air conditioners and comfort fans	G/TBT/M/55	China	10/11/2011
Honey containing pollen from genetically modified maize MON810, Ruling from ECJ	G/TBT/M/55	Argentina, Brazil, El Salvador, Mexico, Uruguay, Canada, United States	10/11/2011
Medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products	G/TBT/M/56	India, Brazil, China	20/03/2012
Safety evaluation of childcare cosmetic products	G/TBT/M/56	China	20/03/2012

Issue	WTO reference documents <sup>a</sup>	Member(s) concerned	First raised
Alternatives to animal testing and new cosmetic regulations	G/TBT/M/56	China	20/03/2012
Provisions on limit values for allergenic substances in children's products (2009/48/EC)	G/TBT/M/56	China	20/03/2012
Regulation (EC) No.1222/2009 Labelling of Tyres, Commission Regulation (EC) No.228/2011, No.1235/2011	G/TBT/M/56	Korea	20/03/2012
Wine and Grape Juice Certification	G/TBT/M/56	United States, Brazil	20/03/2012
Protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products	G/TBT/M/57	South Africa, New Zealand, Australia, Canada, Argentina, United States	13/06/2012
Spain – Ministerial Order of the Government of Spain IET/822/2012, published on 21 April 2012 and in force as of 22 April 2012	G/TBT/M/57	Argentina	13/06/2012
Amended limit values for soluble cadmium in toys (Directive 2012/7/EU)	G/TBT/M/57	China	13/06/2012
Air conditioners, liquid chilling packages and heat pumps, with electrically driven compressors, for space heating and cooling. Testing and rating at part load conditions and calculation of seasonal performance (EN 14825)	G/TBT/M/57	China	13/06/2012
Lists of substances prohibited and restricted in cosmetic products (2008/0025 COD and other related regulations)	G/TBT/M/57	China	13/06/2012

a Only the most recent source document is cited.

Source: WTO Secretariat.

3.93. Technical regulations and conformity assessment procedures are established at EU level through EU legislative acts adopted by the European Parliament and the Council, or by the Commission on the basis of implementing acts or delegating acts conferred by means of an EU act. In addition to publications in the *Official Journal*, the Commission maintains a dedicated website for all public consultations on policy and legislative initiatives.<sup>101</sup> Although there is no statutory requirement to publish notices of preparation of legislation, the Commission indicated that legislative proposals to the European Parliament and the Council are published in the *Official Journal* and the EU decision-making process can be monitored through the internet.<sup>102</sup> The

<sup>101</sup> European Commission online information, "Your Voice in Europe". Viewed at: [http://ec.europa.eu/yourvoice/index\\_en.htm](http://ec.europa.eu/yourvoice/index_en.htm)

<sup>102</sup> European Parliament online information. "Legislative Observatory". Viewed at: <http://www.europarl.europa.eu/oeil/home/home.do>

Commission's Comitology Register enables the tracing of the different stages of the adoption of an implementing measure.<sup>103</sup> According to the Commission, the period allowed between publication of a measure and its application to economic operators varies depending on the measure and whether the measure needs to be transposed into national legislation. The Commission noted that, in general, the minimum implementation period for harmonization legislation is between 18 and 24 months; it may be longer for legislation that breaks new ground or introduces substantial amendments to existing requirements.

3.94. Legislations relating to technical regulations and conformity assessment procedures is published in the *Official Journal* once it is adopted. The Commission maintains the Export Helpdesk website listing the requirements by sector.<sup>104</sup> In addition, an overview of EU legislation relating to various product areas is available on the website of the Commission's Directorate-General for Enterprise and Industry.<sup>105</sup>

3.95. Under the "new approach" to technical harmonization launched in the mid-1980s, legislation adopted at EU level contains "essential requirements" expressed in terms of performance-based indicators or objectives. Essential requirements define the results to be attained, or the hazards to be dealt with, without specifying any particular technical solution. New-approach legislation covers a wide variety of products, including electrical and electronic products, pressure equipment and gas appliances, toys, machinery, medical devices, radio and telecom equipment, elevators, personal protective equipment, equipment for use in explosive atmospheres, and recreational craft. The so-called "old approach" based on detailed product-specific technical requirements is currently applied in the motor vehicles sector. Other specific approaches to EU harmonization have been developed in sectors such as pharmaceuticals, chemicals, cosmetics, construction products, tailored to their particular needs. The Commission does not have data on the market shares of products subject to new approach legislation and other types of harmonizing legislation.

3.96. Technical solutions to meet essential requirements under the "new approach" regulations are set out for most products in harmonized European standards developed by the European Standardization Organizations based on a request from the Commission.<sup>106</sup> Compliance with "harmonized European standards", which according to the Commission are meant to express the state-of-the-art in relation to a specific product/risk, confers presumption of conformity with the essential requirements covered by the standards. Hence, manufacturers who have followed harmonized standards do not have to provide detailed justification as to the adequacy of the applied technical solutions. However, manufacturers remain free to use other technical means to demonstrate compliance with those essential requirements. Harmonized standards, which remain voluntary, can therefore also be regarded as a benchmark against which manufacturers can develop innovative solutions.

3.97. European Standards Organizations include the European Committee for Standardization, the European Committee for Electrotechnical Standardization, and the European Telecommunications Standards Institute. European Standards Organizations have accepted the WTO Code of Good Practice. In addition, all member States have notified acceptance of the Code by one or more of their national standards organizations. In addition, voluntary European standards for services have also been developed.<sup>107</sup>

3.98. Goods that are covered by "new-approach" technical regulations are subject to conformity assessment procedures commensurate with the level of risk associated with them. Large product sectors considered low to medium risk are subject to a supplier's declaration of conformity. These

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<sup>103</sup> European Commission online information, "Comitology Register". Viewed at: <http://ec.europa.eu/transparency/regcomitology/index.cfm>

<sup>104</sup> European Commission online information, "Export Helpdesk". Viewed at: [http://exporthelp.europa.eu/index\\_en.html](http://exporthelp.europa.eu/index_en.html)

<sup>105</sup> European Commission online information, "DG Enterprise: All topics". Viewed at: [http://ec.europa.eu/enterprise/topics/index\\_en.htm](http://ec.europa.eu/enterprise/topics/index_en.htm)

<sup>106</sup> The EU considers that standardisation is the definition of voluntary technical or quality specifications. Details of European standards and European standardization policy can be found the European Commission online information, "DG Enterprise: European Standards". Viewed at: [http://ec.europa.eu/enterprise/policies/european-standards/index\\_en.htm](http://ec.europa.eu/enterprise/policies/european-standards/index_en.htm)

<sup>107</sup> European Commission online information, "DG Enterprise: Standardisation in the internal market for services". Viewed at: [http://ec.europa.eu/enterprise/policies/european-standards/standardisation-policy/policy-activities/services/index\\_en.htm](http://ec.europa.eu/enterprise/policies/european-standards/standardisation-policy/policy-activities/services/index_en.htm)

include electrical and electronic products, energy-related products, radio and telecom equipment, toys, most machinery products, and certain categories of personal protective equipment. In addition, no specific conformity assessment procedure is required for consumer goods that, in the absence of more specific safety legislation at EU level, are subject to the General Product Safety Directive (these goods include childcare goods, textiles, and several other consumer goods).<sup>108</sup> For certain categories of products deemed high risk, third-party conformity assessments conducted by "notified bodies" are required. These high-risk goods include high risk medical devices, certain types of pressure equipment, lift, cableways, gas appliances, and most types of equipment for use in explosive atmospheres.

3.99. Notified bodies are certification, inspection, and testing bodies designated by member States to perform specific conformity assessment activities mandated under EU product legislation. The designation of notified bodies by member States involves a technical assessment of their competence and adequacy of their organization and procedures, typically based on accreditation, and a political decision (the actual designation) whereby member States take responsibility for the operation and supervision of the notified body. In principle, notified bodies must be accredited by the national accreditation body in the member State where they are established.<sup>109</sup> Conformity assessment bodies that are not established in the European Economic Area (EEA) cannot qualify as notified bodies.

3.100. Accreditation is regulated at EU level as provided in Regulation (EC) No. 765/2008 on accreditation and market surveillance. Member States must appoint a single national accreditation body.<sup>110</sup> National accreditation bodies cannot be involved in conformity assessment, operate on a for-profit basis, or compete with other accreditation bodies elsewhere in the EU. National accreditation bodies must recognize the equivalence of the services of other national accreditation bodies that have successfully passed the peer review. Member States cannot refuse certificates or test reports issued by a conformity assessment body accredited by another member State's national accreditation body.<sup>111</sup>

3.101. The designated notified body may subcontract specific parts of its conformity assessment activities to "a different legal entity"<sup>112</sup> according to the legislation and related standards for which it is accredited and only to the extent allowed by such legislation and standards. The notified body in question must demonstrate to the national accreditation body that subcontracted activities are carried out in a competent and reliable manner consistent with relevant requirements. Any certificates prescribed by the applicable legislation must be issued exclusively under the name and responsibility of the notified body that holds the accreditation in the EU.

3.102. Within the EU and EFTA, accreditation bodies cooperate within the framework of European Co-operation for Accreditation (EA). Under EA policy, European accreditation bodies' relationship with accreditation bodies from countries outside EFTA or the "European neighbourhood" should be managed through the International Accreditation Forum (IAF) Multilateral Recognition Agreement (MLA) and the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Agreement (MRA).<sup>113</sup> Regarding countries from the European neighbourhood, the EU notified the WTO that an agreement on conformity assessment and acceptance of industrial products (ACAA) with Israel entered into force since 19 January 2013.<sup>114</sup> The ACAA is a specific type of mutual

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<sup>108</sup> Directive 2001/95/EC of the European Parliament and of the Council, 3 December 2001 (OJ L 11, 15 January 2002).

<sup>109</sup> Three exemption scenarios allow conformity assessment body may seek accreditation elsewhere: the member State in question has not set up a national accreditation body; the national accreditation body does not perform accreditation for the activity for which accreditation is sought; and the relevant national accreditation body has not successfully undergone peer evaluation.

<sup>110</sup> All national accreditation bodies must be members of the European Co-operation for Accreditation (EA) which is the official accreditation "infrastructure", and be subject to regular peer evaluations. The EA is responsible for managing peer evaluations of national accreditation bodies' conformity to the relevant legal requirements.

<sup>111</sup> Article 11, Regulation (EC) No. 765/2008 of the European Parliament and of the Council, 9 July 2008.

<sup>112</sup> For example, another conformity assessment body established in other member State or even outside the EEA.

<sup>113</sup> European co-operation for Accreditation document EA-1/13: 2009, EAs Relationship with Accreditation Bodies not being Members of the EU or EFTA, May 2009. The following participate in the European neighbourhood policy: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestinian Authority, Syria, Tunisia, Ukraine.

<sup>114</sup> WTO document G/TBT/10.7/N/121, 7 February 2013.



recognition agreement, based on alignment of the legislation, standards and related infrastructure of the partner country concerned with those of the EU. In the covered sectors, the ACAA provides for mutual acceptance of products, without the need for any additional testing and certification. While the focus of ACAAs is on products subject to EU harmonization legislation, the ACAAs also foresee the possibility of granting mutual acceptance of specific industrial products (to be individually listed in an Annex) that are lawfully placed in the each other's market in the absence of common regulation. At present, the EU-Israel ACAA is limited to one sector (good manufacturing practice for pharmaceuticals) and scope extensions will be possible in the future. ACAA negotiations are ongoing with the Former Yugoslav Republic of Macedonia, and preparations for ACAA negotiations are under way with Tunisia, Morocco, Egypt, Jordan, Algeria, Lebanon, the Palestinian Authority, Ukraine, Moldova, Georgia and Armenia.

3.103. For products subject to mandatory third-party conformity assessment in a non-harmonized area pursuant to member State legislation, member States' national authorities may refuse to accept conformity attestations issued under accreditation by non-European accreditation bodies that do not comply with the new European requirements even if they are signatories to the ILAC/IAF MRA/MLA.<sup>115</sup> Where mandatory third-party conformity assessment is provided for in the harmonised area, the relevant EU legislation specifies the applicable procedures, the qualifications that conformity assessment bodies must fulfil (e.g. in the case of notified bodies), including, where applicable, the conditions of acceptance of tests and certificates from conformity assessment bodies not established in the EU. In addition, there exist a number of bilateral mutual-recognition agreements relating to conformity assessment, according to which member State authorities must accept certificates issued by foreign bodies in accordance with the agreement. Currently the EU has such agreements in place with: Australia; Canada; Israel; Japan; New Zealand; Switzerland; and the United States.<sup>116</sup> The Commission also noted that recently concluded/signed FTAs also include certain TBT provisions and, in some cases, contain general or sector-specific arrangements aimed at facilitating acceptance of conformity assessment results.

3.104. In addition to a common accreditation framework, Regulation (EC) No. 765/2008 sets out common principles for market surveillance.<sup>117</sup> In February 2013, the Commission submitted proposals for revision of the regulatory framework for market surveillance, with the aim of streamlining and simplifying surveillance operations whilst maintaining a high level of protection of the health and safety of consumers.<sup>118</sup> Market surveillance activities are organized at the level of member States who must notify the Commission, through the rapid information system "RAPEX", of any restrictive measures taken against products presenting a serious risk.<sup>119</sup> In 2012, 2,278 measures (1,938 of them concerning products presenting a serious risk) were notified to the Commission, compared with 2011 when 1,803 measures were notified (1,556 concerning a serious risk). As regards measures against dangerous professional products, the number of notified measures to the Commission has shown a pattern of increase since the entry of force of Regulation (EC) No. 765/2008: in 2012, 37 notifications submitted to the Commission with 31 presenting serious risks, up from 25 notifications (17 as serious risks) in 2011; and 20 with 7 as serious risks in 2010.<sup>120</sup> The Commission expects that the notification figures will go up over time as member

<sup>115</sup> European Commission document SWD (2013) 35 final, 13 February 2013. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=swd:2013:0035:FIN:EN:PDF>.

<sup>116</sup> European Commission document SWD (2013) 35 final, 13 February 2013. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=swd:2013:0035:FIN:EN:PDF>.

<sup>117</sup> Regulation (EC) No. 765/2008 complements the market surveillance rules set out in Directive 2001/95/EC (General Product Safety Directive) and in sector-specific harmonization legislation.

<sup>118</sup> European Commission online information, "DG Enterprise: Market surveillance". Viewed at: [http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/market-surveillance/index\\_en.htm](http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/market-surveillance/index_en.htm)

<sup>119</sup> The reference to the RAPEX system has also had the effect of extending the obligation to send RAPEX notifications to all goods falling within the scope of EU harmonisation legislation, including products for use in a professional context (e.g. industrial machinery) and products which may harm public interests other than health and safety (e.g. environment, security, fairness of commercial transactions, etc.). See European Commission document COM(2013) 77 final, 13 February 2013. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0077:FIN:EN:PDF>

<sup>120</sup> The reference to the RAPEX system has also had the effect of extending the obligation to send RAPEX notifications to all goods falling within the scope of EU harmonization legislation, including products for use in a professional context (e.g. industrial machinery) and products which may harm public interests other than health and safety (e.g. environment, security etc.). However, the Commission pointed out that not all harmonized products are subject to RAPEX notifications, e.g. for medicinal products, medical devices member States use specific alert systems.

States become more proactive in the area of professional products and fully adjust their practices to the broader scope of RAPEX. Regarding imports, the Regulation requires that customs authorities must carry out "appropriate checks on the characteristics of products on an adequate scale" before those products can be marketed in the EU.

### 3.1.9 Sanitary and phytosanitary standards (SPS)

3.105. The European Union and each of its member States have notified enquiry points under the SPS Agreement.<sup>121</sup> The Directorate General for Health and Consumers of the European Commission is the EU notification authority.<sup>122</sup>

3.106. The EU notified 51 regular and 7 emergency SPS measures to the WTO between 1 January 2011 and 31 January 2013. The EU considers that, of the 41 notified measures for which there was a relevant international standard, 29 conformed to that international standard. Apart from emergency notifications, almost 85% of notifications specified the multilaterally recommended 60-day period for public comment (up from below 60% in the last TPR); for the rest, the EU considered that a comment period was not applicable, or the period between publication of the notification and adoption of the measure was less than 60 days. Among the notified measures, the EU identified 13 as "trade facilitating". In addition, the EU submitted a large number of addenda during the period under review, providing additional information on previously notified SPS measures.

3.107. Among the EU member States, only the Netherlands and France made individual notifications via the EU Notification Authority and Enquiry Points during the review period.<sup>123</sup> The notification from the Netherlands concerns the legislation of SPS procedure for ornamental plants from Asia; and the notification from France concerns the amended legislation of the use of enzymes in certain manufactures of certain foods and beverages.

3.108. Since the last Review of the EU, WTO Members have discussed concerns in the SPS Committee regarding a few EU measures. Five new trade concerns were raised for the first time during the review period (Table 3.8).

**Table 3.8 Specific trade concerns over EU SPS measures, January 2011-February 2012**

	WTO reference document <sup>a</sup>	Raised by	Date first raised	Solution
Application and modification of Regulation on Novel Foods	G/SPS/R/64	Colombia; Ecuador; Peru	01/03/2006	Not reported
Regulation No. 1099/2009	G/SPS/R/63	India	29/06/2010	Not reported
Maximum residue levels of pesticides	G/SPS/R/64	India	20/10/2010	Not reported
Regulation on Polyamide and Melamine Plastic Kitchenware	G/SPS/R/62	China; Hong Kong, China	30/03/2011	Not reported
Regulations on Cadmium in Cocoa	G/SPS/R/64	Ecuador	19/10/2011	Not reported
EU Court of Justice ruling regarding pollen derived from GMOs	G/SPS/R/64	Argentina	19/10/2011	Not reported
Limits of Aluminium in Flour Products	G/SPS/R/66	China	27/03/2012	Not reported
Testing of Pesticide Residues	G/SPS/R/67	India	10/07/2012	Not reported

a Only the most recent source document is cited.

Source: WTO Secretariat.

3.109. EU member States are members of the Codex Alimentarius Commission, the World Organization for Animal Health (OIE), and the International Plant Protection Convention (IPPC). The EU itself is a member of Codex and the IPPC.

<sup>121</sup> WTO document G/SPS/ENQ/26, 11 March 2011.

<sup>122</sup> WTO document G/SPS/NNA/16, 11 March 2011.

<sup>123</sup> WTO documents G/SPS/N/NLD/70, 11 April 2011; and G/SPS/N/FRA/8, 15 May 2012.



3.110. Since the last TPR of the EU, there has been no change in the legislative framework for SPS: Regulation No. 178/2002 (known as the General Food Law), Regulation No. 852/2004, 853/2004, and 854/2004 on food hygiene, Regulation No. 882/2004 on official controls, and Council Directive 2000/29/EC on plant health.

3.111. SPS legislation is to a very large extent harmonized in the EU, hence SPS measures are adopted mostly at EU level; only in very few cases member States may also adopt individual SPS measures.<sup>124</sup> SPS measures at EU level are usually established through "implementing acts" that are subject to the "comitology" procedures provided in Regulation (EU) No. 182/2011. The main regulatory committees involved in the development of SPS measures are the Standing Committee on the Food Chain and Animal Health, and the Standing Committee on Plant Health.<sup>125</sup> Provided by the Lisbon Treaty, SPS measures may also be established on the basis of powers conferred to the Commission to adopt "delegated acts". The European Food Safety Authority (EFSA) is an independent risk assessment body of the EU, providing independent scientific advice on existing and emerging risks related to SPS matters including food safety and genetically modified organisms authorization.

3.112. All food must comply with the general requirements laid down in the General Food Law and specific requirements depending on the product. The General Food Law sets out the general principles governing food and feed at EU and member State level; the Commission noted that measures adopted under this Law are always based on risk analysis. The General Food Law permits the establishment of "provisional" measures if "the possibility of harmful effects on health is identified but scientific uncertainty persists".<sup>126</sup> These measures must be "proportionate and no more restrictive of trade than is required to achieve the high level of health protection" in the EU, and must be reviewed "within a reasonable period of time".

3.113. Measures adopted under the General Food Law must take into consideration international standards, "except where such standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives of food law or where there is a scientific justification, or where they would result in a different level of protection from the one determined as appropriate in the EU". In the context of the last review of the EU, some Members sought clarification on the actual level of protection adopted by the EU, and the consistency of the application of protection.<sup>127</sup> Regarding animal health and food of animal origin, the Commission stated that EU legislation is largely based on OIE/Codex recommendations, standards, and guidelines,<sup>128</sup> in rare cases where the EU does not follow OIE/Codex recommendations, the EU SPS measures are based on the scientific opinion of the EFSA. On measures in the field of plant health and products of non-animal origin, the Commission noted that the EU follows the relevant international standards where they exist.

3.114. Imported food must comply with relevant EU requirements or those recognized by the EU to be at least equivalent to the ones established in the EU food law and animal and plant health rules. The EU has concluded agreements in the veterinary or, more generally, in the SPS field with Andorra, Canada, Chile, EFTA, Faroe Islands, Liechtenstein, Mexico, New Zealand, San Marino, Switzerland, the United States and Korea.<sup>129</sup> The EU has also concluded agreements with Singapore, Peru and Colombia, and with Central America<sup>130</sup> that contain specific provisions to facilitate trade once the respective SPS import requirements are met.

3.115. Imports of live animals and products of animal origin are allowed only from those countries or regions that have received prior approval, and thus appear on the relevant "third country list"

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<sup>124</sup> In the context of previous review of the EU, the Commission notes that SPS measures not being harmonized are very residual. See WTO document WT/TPR/M/248/Add.1, 30 August 2011.

<sup>125</sup> These committees are composed of experts of the member States and of the Commission.

<sup>126</sup> Article 7(1).

<sup>127</sup> WTO document WT/TPR/M/248/Add.1, 30 August 2011.

<sup>128</sup> European Commission (2007).

<sup>129</sup> For detailed information about these agreements, see the European Commission online information, "International Affairs: Sanitary and Phytosanitary Agreements". Viewed at: [http://ec.europa.eu/food/international/trade/agreements\\_en.htm](http://ec.europa.eu/food/international/trade/agreements_en.htm) [24.02.13].

<sup>130</sup> The agreements with Peru and Colombia, and with Central America are expected to be applied in 2013.

managed by the Commission.<sup>131</sup> This list can be consulted by sector or by country. The term "products of animal origin" covers food that has been derived from animals or comes from animals, whether processed (e.g. ham, marinated fish, egg powder, and gelatine) or not (e.g. fresh meat, fishery products, raw milk, eggs, and honey).<sup>132</sup> It also covers products not intended for human consumption, whether processed (e.g. pet food) or not (e.g. raw material for pharmaceutical use, wool, hides, and skins).

3.116. Requests for first-time imports of live animals and products of animal origin must be submitted to the Commission by the competent national authority of the exporting country. In general, the approval process involves an evaluation, including an on-site audit visit, by the Commission's inspection service, the Food and Veterinary Office (FVO). The objective of the audit is to evaluate whether the animal and public health situation, official services, legal provisions, control systems, and production standards meet EU requirements. The Commission indicates that it does not charge a fee for its audits and pays the expenses of the audit team.

3.117. If the evaluation outcome is satisfactory, the Commission prepares draft legislation to include the country in question on the lists regarding animal and public health. The Commission adopts the draft legislation provided that the Standing Committee on the Food Chain and Animal Health agrees. Approvals may cover all or part of a country, reflecting its animal and public health status and the type of animal or product of animal origin for which approval is sought. Applicant countries must be OIE members, have systems in place for the rapid detection, reporting, and confirmation of OIE-listed diseases, and fulfil other legislative requirements. The Commission has published guidance on these requirements.<sup>133</sup>

3.118. In addition to being placed on the relevant list, countries seeking to export animals and products of animal origin to the EU must obtain approval for their residue monitoring programme. For live animals, hatching eggs and table eggs of fowl (*Gallus gallus*) and turkeys, the exporting country must have a salmonella control programme in these animal populations. For certain food products, food safety criteria (salmonella, listeria) apply. Products of animal origin may be imported into the EU only from food businesses (e.g. slaughterhouses, processing plants and fishing vessels) that appear on lists drawn up and updated by the Commission on the basis of a request from the exporting country. The competent authorities of exporting countries must guarantee the requirements are met, and must inform the Commission if a [listed] establishment no longer fulfils the requirements. For food, these approvals also involve the adoption of legislation by the Commission. The Commission has published guidance on the criteria for these approvals.<sup>134</sup> Imports of meat are also subject to certification on the protection of animals at the time of slaughter or killing.<sup>135</sup> There are no statutory limitations regarding the duration of the process to approve first-time imports of live animals and products of animal origin.

3.119. Control procedures on imports of live animals and products of animal origin are largely harmonized across the EU. Imports of those goods must be accompanied by health certification attesting to the fulfilment of EU import conditions. They must undergo official controls at the EU-approved Border Inspection Posts (BIPs) on the EU border and may be subject to additional controls at the destination countries. The official controls at the border involve documentary,

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<sup>131</sup> Detailed information can be found on the European Commission (DG-SANCO) online information, "International Affairs: Import Conditions – Third Countries". Viewed at: [http://ec.europa.eu/food/international/trade/third\\_en.htm](http://ec.europa.eu/food/international/trade/third_en.htm) [25.02.13].

<sup>132</sup> European Commission (2006), Guidance document key questions related to import requirements and the new rules on food hygiene and official food controls, January 2006. Viewed at: [http://ec.europa.eu/food/international/trade/interpretation\\_imports.pdf](http://ec.europa.eu/food/international/trade/interpretation_imports.pdf).

<sup>133</sup> European Commission document SANCO/7166/2010. Viewed at: [http://ec.europa.eu/food/international/trade/importing\\_en.htm](http://ec.europa.eu/food/international/trade/importing_en.htm). See also, European Commission online information, "International Affairs, Import Conditions". Viewed at: <http://ec.europa.eu/food/international/trade/>.

<sup>134</sup> European Commission document SANCO/7166/2010. Viewed at: [http://ec.europa.eu/food/international/trade/importing\\_en.htm](http://ec.europa.eu/food/international/trade/importing_en.htm). See also, European Commission online information, "International Affairs, Import Conditions". Viewed at: [http://ec.europa.eu/food/international/trade/index\\_en.htm](http://ec.europa.eu/food/international/trade/index_en.htm).

<sup>135</sup> The principal legislation on animal welfare is listed in: European Commission online information, "Animal Welfare: Main Community Legislative References". Viewed at: [http://ec.europa.eu/food/animal/welfare/references\\_en.htm](http://ec.europa.eu/food/animal/welfare/references_en.htm).

identity, and physical checks.<sup>136</sup> The frequency of physical checks may be reduced for products of animal origin subject to EU harmonized requirements, taking into account the risk profile of the product concerned.<sup>137</sup> Imports of live animals must be notified to the border inspection post at least 24 hours prior to arrival in the EU; imports of products of animal origin must be notified before arrival. Notifications may be submitted electronically through the Trade Control and Expert System (TRACES); an electronic communication tool that allows all the veterinary inspectors in BIPs to access the documents with the outcome of checks performed by other BIPs.

3.120. Where recurrent problems have been identified with certain products of animal origin from a given third country, a safeguard measure can be adopted, i.e. the "special import conditions". These measures of "special import conditions" consist of up to 100% testing of the consignment or pre-export testing and certification. The list regarding products from third countries subject to "special import conditions" is available to the public on the website of the European Commission.<sup>138</sup> These measures currently affect eight WTO Members and involve fishery products, horse and rabbit meat, poultry, eggs and egg products, honey, milk products, and food and feed (November 2012).<sup>139</sup>

3.121. Unlike for animals and products of animal origin, first-time imports of plants and their products do not require pre-approval. The same principle applies to food of non-animal origin, including fruits, vegetables, cereals, drinks, spices, condiments, and food of mineral origin. All food must comply with the general requirements on food hygiene in Regulation No. 852/2004, and, depending on the product, on contaminants, pesticide residue levels, food additives, food irradiation, novel foods, and radioactivity. There are also product-specific requirements for quick-frozen foodstuffs, foodstuffs for particular nutritional purposes, and genetically modified organisms. Certain plants and plant products must comply with phytosanitary requirements.

3.122. In general, feed and food of non-animal origin may enter the EU without certification by the exporting country or pre-arrival notification. Authorities of member States must organize regular official controls for such imports. Control activities in member States must take place at an appropriate place, which may be the border, point of release for free circulation, or retail outlets. Consignments of certain imports of feed and food of non-animal origin specified in Annex I to Regulation No. 669/2009 must be notified before arrival, and must enter the EU through designated points of entry, where they are subject to reinforced controls. These include documentary checks on all consignments, and identity and physical checks, including laboratory analyses, at the frequency established by Annex I (subject to quarterly review).

3.123. Plants and plant products listed in Council Directive 2000/29/EC (Annex V, Part B) must be accompanied by a phytosanitary certificate issued by the competent authority of the exporting country, and are subject to border controls, including physical inspection. The frequency of controls may be reduced for products from specific countries, based on risk profiling. There are 52 products from specific countries subject to reduced inspections. Unless determined by member States on an exceptional basis for particular commodities, imports of plants and plant products are not restricted to specific border posts.

3.124. The Rapid Alert System for Food and Feed (RASFF) is a network managed by the Commission that allows food and feed authorities of member States to exchange information about measures taken in response to serious risks detected in relation to food and feed. Measures taken by member States, e.g. recalls of food/feed, or border rejections of consignment of food/feed, must be immediately notified to the Commission (Table 3.9).<sup>140</sup> There are two kinds of RASFF notifications: market notifications and border rejections. A member of the network sends a market

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<sup>136</sup> Consignments of live animals and products of animal origin must also be accompanied by the model health certificate set out in EU legislation for the relevant species or product. In the absence of an EU model health certificate for a particular species or product, member States may establish their own import requirements.

<sup>137</sup> Decision 94/360/EC, 20 May 1994 (OJ L 158, 25 June 1994).

<sup>138</sup> European Commission online information, "DG SANCO: Special Import Conditions". Viewed at: [http://ec.europa.eu/food/animal/bips/special\\_imports\\_en.htm](http://ec.europa.eu/food/animal/bips/special_imports_en.htm).

<sup>139</sup> Albania, Bangladesh, China, India, Japan, Mexico, Myanmar, and Ukraine. The updated list is found on European Commission online information. Viewed at: [http://ec.europa.eu/food/animal/bips/docs/special\\_import\\_conditions.pdf](http://ec.europa.eu/food/animal/bips/docs/special_import_conditions.pdf).

<sup>140</sup> Article 50 of the General Food Law sets out the criteria for notification to the RASFF.

notification<sup>141</sup> when a risk is found in a food or feed product placed on the market whereas a border rejection is sent when a product has been refused entry into the EU. In the context of the previous review of the EU, some WTO Members raised concerns and asked questions about the transparency of the RASFF, and potential restrictions on trade.<sup>142</sup> The Commission indicates that one of the objectives for RASFF is to assist the risk assessment of food and feed, and the exporting country concerned will be notified and allowed to provide feedback when the consignment is notified to the RASFF. According to the Commission, notifications to the RASFF do not trigger immediate restrictions on trade. The Commission noted that Standard Operation Procedures (SOPs) for using RASFF are currently under review, and will be made public in 2013. These Procedures are intended to harmonize the use of RASFF between EU member States and allow the system to work in a more coordinated manner.<sup>143</sup>

**Table 3.9 RASFF notifications, January 2011-December 2012**

Year	Alert <sup>a</sup>	Border rejection <sup>b</sup>	Information <sup>c</sup>	Information for attention <sup>d</sup>	Information for follow-up <sup>e</sup>
<b>Original notification</b>					
2011	617	1,813	26	697	544
2012	526	1,715	0	682	508
<b>Follow-up notification</b>					
2011	2,265	1,053	421	480	1,126
2012	2,312	906	74	663	1,326

- a Alert notifications are sent when a food or feed presenting a serious health risk is on the market and when rapid action is required. The RASFF member that identifies the problem and takes the relevant actions (e.g. withdrawal of the product) triggers the alert.
- b Border rejections concern food and feed consignments that have been tested and rejected at the external borders of the EU (and the European Economic Area – EEA) when a health risk has been found. The notifications are sent to all EEA border posts in order to reinforce controls and to ensure that the rejected product does not re-enter the EU through another border post.
- c Information notifications are used when a risk has been identified about food or feed placed on the market, but the other members do not have to take rapid action.
- d Information notifications for attention are related to a product that is present only in the notifying member country, or has not been placed on the market, or is no longer on the market
- e Information notifications for follow-up are related to a product that is or may be placed on the market on another member country.

Source: Information provided by the European Commission.

3.125. The legislative framework at EU level regarding genetically modified organisms (GMOs) remained largely unchanged during the period under review. Its basis includes Regulation (EC) No. 1829/2003 on genetically modified food and feed, Directive 2001/18/EC on the deliberate release of GMOs into the environment, and Regulation (EC) 1830/2003 on the traceability and labelling of GMOs, and food and feed produced from GMOs. In June 2011, the Commission adopted Regulation (EU) 619/2011 (entry into force on 15 July 2011) which laid down methods of sampling and analysis for the official control of feed as regards presence of genetically modified material for which an authorization procedure is pending or the authorization of which has expired.

3.126. Within the EU, GMOs need different authorizations to be used in food and feed, or for cultivation. The EFSA is responsible for carrying out the risk assessment on each application for authorization in collaboration with member States. The risk management and the authorization process are carried out by the Commission with member States, and the authorization decision is applied to all EU member States.<sup>144</sup> The Commission in March 2013 adopted the Implementing Regulation on requirements to be fulfilled by companies when submitting applications for the authorization of new GMOs for food/feed uses. The Commission stated that the key objectives of this Implementing Regulation are: to reinforce and improve the authorization process of GM food and feed; to clarify the requirements for submitting a request; and to have these requirements

<sup>141</sup> There are two types of market notifications: alert and information notifications.

<sup>142</sup> WTO document WT/TPR/M/248/Add.1, 30 August 2011.

<sup>143</sup> WTO document WT/TPR/M/248/Add.1, 30 August 2011.

<sup>144</sup> The European Commission maintains a website of register of authorized GMOs. For details, see the European Commission online information, "EU Register of Authorised GMOs". Viewed at: [http://ec.europa.eu/food/dyna/gm\\_register/index\\_en.cfm](http://ec.europa.eu/food/dyna/gm_register/index_en.cfm).

formally endorsed by EU member States. The authorization of GMOs is subject to "comitology" procedures.

3.127. Under certain circumstances, member States are allowed to temporarily restrict or prohibit the use and/or sale the GM products that are authorized at EU level on their own territory.<sup>145</sup> Six member States currently apply restrictions on use (including sale) of certain GMOs: Austria, France, Greece, Hungary, Germany, and Luxembourg. In a proposed regulation to amend Directive 2001/18/EC, the Commission in July 2010 proposed to allow member States to restrict or prohibit the cultivation in all or part of their territories of GMOs authorized at EU level.<sup>146</sup> Under the proposed regulation, member States may adopt measures with respect to the cultivation of GMOs in their territories, but not with respect to the import into the EU of authorized GM seeds and plant-propagating material, and the products of their harvest.

3.128. The European Court of Justice ruled in September 2011 that pollen from genetically modified (GM) plants contained in honey counts as a food ingredient and requires authorization. The implications of this ruling affect both honey imported into the EU and honey produced within the EU. GM pollen in honey needs to be authorized in accordance with EU GMO legislation and pollen in honey is considered as an ingredient and not a constituent and consequently honey needs to be labelled with a list of ingredients and GM labelling is needed when GM pollen exceeds 0.9% of total pollen. The Commission adopted a proposal in September 2012 for an amendment to the Honey Directive explicitly providing that pollen is not an "ingredient" but a "constituent" of honey thus aligning EU legislation with the provisions of the Codex Standard on honey. The consequences of this change are that honey will not have to be labelled with a list of ingredients, as it is considered to be a primary product and is subject to the 0.9% GM labelling threshold if it constitutes GM pollen. The proposal does not question the conclusion of the Court that GM pollen in honey will need to be authorized.

## 3.2 Measures Directly Affecting Exports

3.129. The legal and institutional framework of export measures has not substantially changed since the last review.<sup>147</sup>

### 3.2.1 Registration and documentation

3.130. The main customs procedures for imports of goods also apply to exports (section 3.1.1).

3.131. In general, goods exported out of the EU must go through an export procedure and declared at customs. If no simplified procedure is used, the export declaration is made on the Single Administrative Document (SAD) or its electronic equivalent at the customs office of export, at the place where the declarant/exporter is established, or where the goods are packed or loaded for export. If this is not possible for administrative reasons, the EU Customs Code allows for declarations to be lodged with any customs office which is competent for the operation in question. An export declaration may also be accepted by a customs office other than that normally responsible, provided there are "duly justified good reasons".<sup>148</sup>

3.132. The information contained in the export declaration is complemented, where appropriate, by security-related data.

3.133. In cases where the goods travel through another member State, the customs office of export then sends the customs office of exit the export declaration information through the Export Control System (ECS). The results of the exit are reported back electronically to the customs office of export, for the issuance of the export notice (exit confirmation) to the declarant or exporter.

3.134. Simplified procedures allow for swifter clearance at the time of shipment.

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<sup>145</sup> Article 23 of the Directive 2001/18/EC.

<sup>146</sup> European Commission document COM(2010) 375 final, 13 July 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0375:FIN:EN:PDF>.

<sup>147</sup> WTO document WT/TPR/S/248, 8 July 2011.

<sup>148</sup> European Commission, online information. Viewed at [http://ec.europa.eu/taxation\\_customs/customs/procedural\\_aspects/export/procedure/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/procedural_aspects/export/procedure/index_en.htm).

### 3.2.2 Export taxes, charges, and levies

3.135. The EU does not apply taxes on exports.

### 3.2.3 Restrictions and controls

3.136. The export control regime is set out in several pieces of legislation including: EU Council Regulation (EC) No. 428/2009 on dual-use items; and the Common position on Arms Exports (2008/944/CFSP). Regulation 428/2009 was amended on 16 November 2011 by Regulation (EU) No 1232/2011 that entered into force on 7 January 2012.<sup>149</sup>

3.137. Under the EU regime, controlled items may not leave the EU customs territory without an export authorization, although items not on the list of controlled items (in Annex I of Regulation No. 428/2009) may also be subject, by national authorities, to export controls. In compliance with UN Resolution 1540, Regulation 428/2009 provides member States with the possibility to prohibit brokering services with regard to dual-use items not located in the EU and transit of non-Community dual-use items passing through the EU under very strictly defined circumstances (mainly a serious risk of proliferation of weapons of mass destruction).

3.138. There are four types of export authorizations granted at EU and member-State levels: EU General Export Authorisations (EU GEAs); National General Export Authorisations (NGAs); Global Authorisations; and Individual Authorisations.

3.139. There are currently six EU GEAs in place for dual-use items (five of which were created by amending Regulation 1232/2011):

- EU001 - export of most dual-use items to Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Liechtenstein), and United States of America;
- EU002 - export of 19 specified categories of dual-use items to Argentina, Croatia, Iceland, South Africa, the Republic of Korea, and Turkey;
- EU003 - export of certain dual-use items after repair/replacement to 24 specified destinations;
- EU004 - temporary export of certain dual-use items for exhibitions or fairs to 24 specified destinations;
- EU005 - export of specified telecommunication products and technologies to nine specified destinations; and
- EU006 - export of specified chemicals to Argentina, Croatia, Iceland, the Republic of Korea, Turkey, and Ukraine.

3.140. At the member-State level, there are general, global, or individual export authorizations, all of which are valid throughout the EU. France, Germany, Greece, Italy, Sweden, the Netherlands, and the UK currently have National General Export Authorizations (NGAs) in place.<sup>150</sup> In addition, NGAs are published in the official journals of the issuing countries, and they may only be issued if they do not conflict/overlap with existing EU GEAs.

3.141. Individual and Global Authorizations may be granted to an exporter by member States, and they cover either one end user (Individual), or several countries and end users (Global). In assessing applications for Individual or Global Authorizations, member States must take into consideration the criteria specified in the Regulation.

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<sup>149</sup> Regulation (EU) No. 1232/2011 of 16 November 2011.

<sup>150</sup> *Official Journal of the European Union*, volume 55, 6 March 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:067:FULL:EN:PDF>.



3.142. The EU list of controlled items is based on control lists adopted by international export control regimes:

- the Australia Group on minimizing the risk of assisting chemical and biological weapon proliferation;
- the Nuclear Suppliers Group on the non-proliferation of nuclear weapons;
- the Wassenaar Arrangement on export control for conventional arms and dual-use goods and technologies; and
- the Missile Technology Control Regime on the coordination of national export licensing efforts on the non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction.

3.143. Following the 2011 amending regulation, EU member States may deny certain EU General Export Authorizations to an exporter if they have reasonable suspicion about the exporter's ability to comply with such authorization. However, in such a case, member States are obliged to exchange information on those exporters. In addition, under Regulation 428/2009, the EU may negotiate mutual-recognition agreements with third countries (which so far has not been used).

3.144. Annex I to Regulation (EC) No. 428/2009 was amended on 15 June 2012, in order to take account of changes agreed within the Australia Group, the Nuclear Suppliers Group, the Missile Technology Control Regime and the Wassenaar Arrangement.<sup>151</sup>

3.145. In June 2011, the European Commission issued a Green Paper launching a public consultation on the EU export control system in which over 100 stakeholders representing public administrations, business associations and private operators, as well as academia and civil society took part. The report on the Green Paper public consultation was issued in January 2013.<sup>152</sup> According to the Commission, a Communication is under preparation, and should be issued by 2014, to set out policy initiatives geared at adapting the system to rapidly changing technological, economic and political circumstances.

### 3.2.4 Official support and related fiscal measures

3.146. The EU continues to provide export subsidies to eligible exporters of certain agricultural products (Chapter 4.1).

3.147. A drawback system continues to apply under the EU Customs Code. It allows importers to claim repayment of import duties paid on imported goods if they export such goods in the form of "compensating products", i.e. products resulting from processing operations.<sup>153</sup> In addition, the Customs Code establishes a suspension system whereby imported goods intended for export in the form of compensating products are not subject to import duties.<sup>154</sup>

3.148. Once in force, the Modernized Customs Code will eliminate the drawback system, as the number of importers using this procedure has decreased to a level where the management cost of the procedure is now disproportionate to the benefits provided by the scheme.

### 3.2.5 Finance, insurance guarantees, and promotion

3.149. Export credits are granted at the member-State level through official export credit agencies.

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<sup>151</sup> *Official Journal of the European Union*, 16 May 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:129:0012:0280:EN:PDF>.

<sup>152</sup> European Commission document SWD(2013) 7 Final, 17 January 2013. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\\_150459.pdf](http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150459.pdf).

<sup>153</sup> Article 114.1(b), Council Regulation No. 2913/92, 12 October 1992.

<sup>154</sup> Article 114.1(a).

3.150. Since 2012, the simplified "escape clause" for short-term export insurance under the Temporary Union framework for State-aid measures to support access to finance in the financial and economic crisis, has been terminated. Official export credits are regulated through Council Directive 98/29/EC of 7 May 1998, on medium- and long-term export credit insurance established principles for official insurance and guarantee arrangements, premiums, and cover policies.

3.151. The European Union is a participant to the OECD Arrangement on Officially Supported Export Credits, whose modifications are regularly integrated into EU law (the most recent update being made through EU Regulation 1233/2011).

3.152. The EU provides assistance to promote its agricultural products and food outside the EU. Export promotion schemes are in place at the national or sub-national levels. In November 2011, the European Commission adopted a Communication which aims at creating conditions for European SMEs to seize new business opportunities outside the EU.<sup>155</sup> The fields of action defined include the reinforcement of existing support services, the creation of a single virtual gateway to disseminate information to SMEs, and promoting networks.<sup>156</sup>

3.153. Existing measures financed by the Commission to support SMEs' access in third markets include: the Enterprise Europe Network; the European Business and Technology Centre in India; the EU SME Centre in Beijing, China; and the EU-Japan Centre for Industrial Cooperation in Japan.

### 3.3 Measures Affecting Production and Trade

#### 3.3.1 State trading and state-owned enterprises

3.154. Systembolaget is a state-owned company with an exclusive right for retail sale of alcoholic beverages that contain more than 3.5% (by volume) alcohol in Sweden. According to the Commission, after requests from WTO Members, the EU notified "Systembolaget AB" as a "state-trading enterprise" in accordance with the working definition in the Understanding on the Interpretation of Article XVII of the GATT 1994.<sup>157</sup>

3.155. In 1997, the European Court of Justice (ECJ) recognized that retail sale of alcoholic beverages in Sweden could be carried out exclusively by the state-owned "Systembolaget" as long as the system was non-discriminatory and pursued a legitimate public interest, namely the protection of public health against the harm caused by alcohol.<sup>158</sup>

3.156. In 2007, the ECJ ruled that Sweden's Alcohol Act, under which private individuals (other than travellers) were prohibited from importing alcoholic beverages without involving "Systembolaget" amounted to an unjustified quantitative restriction on imports, and could not be justified as a means to protect human life and health.<sup>159</sup>

3.157. The Commission indicated that the Swedish law was changed, following the ECJ's judgement, to allow the import (including through distance selling) of alcohol from other EU member States for personal use to Sweden.<sup>160</sup>

3.158. Under the existing contract between the Swedish Government and Systembolaget, the company must treat all beverage suppliers equally. The resale price of an imported product is determined by adding to the supplier's offering price: a variable mark-up (currently 19%), a fixed mark-up (that is added on all items sold by Systembolaget), a mark-up covering transport and administrative costs, estimated duties and taxes (if applicable), and recycling costs.

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<sup>155</sup> European Commission document COM(2011) 702 final, 9 November 2011. Viewed at: [http://ec.europa.eu/enterprise/policies/sme/market-access/files/com\\_2011\\_0702\\_f\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/market-access/files/com_2011_0702_f_en.pdf).

<sup>156</sup> European Commission online information. Viewed at: [http://ec.europa.eu/enterprise/policies/sme/market-access/internationalisation/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/market-access/internationalisation/index_en.htm).

<sup>157</sup> WTO document G/STR/N/13/EU, 28 June 2012.

<sup>158</sup> EU on line information, Case C-189/95 Franzen. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61995CJ0189:EN:PDF>.

<sup>159</sup> European Commission Legal Service, Case C- 170/04 Klas Rosengren and Others. Viewed at [http://ec.europa.eu/dgs/legal\\_service/arrets/04c170\\_en.pdf](http://ec.europa.eu/dgs/legal_service/arrets/04c170_en.pdf).

<sup>160</sup> Amendment SFS 2008:366 of 11 June 2008. Viewed at: <http://www.lagboken.se/files/SFS/2008/080366.PDF>.



3.159. EU member States continue to have full or partial ownership of several enterprises operating in the scope of Services of General Economic Interest (SGEI), including energy and transport sectors. Sources have indicated that EU countries retain shareholdings in over 900 enterprises.<sup>161</sup> However, the Commission could not guarantee the accuracy of that information.

3.160. The EU maintains competitive neutrality frameworks in order to identify and eliminate competitive advantages which SOEs may have, including with respect to taxation, financing costs and regulatory neutrality.<sup>162</sup>

3.161. In 2012, the Commission issued a guidance paper on state-aid-compliant financing, restructuring and privatization of state-owned enterprises.<sup>163</sup> The paper aimed to raise awareness of the EU's main state-aid rules when providing finance to state-owned enterprises, as well as restructuring and privatizing SOEs.

3.162. Gradual market opening and liberalization are under way in rail transport and postal services. The first railway package (Directive 2001/12 of 26 February 2001, amending Directive 91/440) opened the Trans-European Rail Freight network by 15 March 2003. In the second rail package of 29 April 2004 (Directive 2004/51), freight liberalisation was extended to international freight services by 1 January 2006 and to domestic freight services by 1 January 2007. In the third railway package (Directive 2007/58 of 23 October 2007), international passenger services were opened by 1 January 2010. In its proposal of 30 January 2013 [COM (2013)29] the Commission proposes to open domestic passenger services as of December 2019.

3.163. The 3<sup>rd</sup> Directive on postal services adopted on 20 February 2008 provides for the termination of all remaining postal monopolies by the end of 2012. The Commission indicated in the context of this report that it was too early to assess the full implementation of the Directive.

### 3.3.2 Subsidies and other government assistance

#### 3.3.2.1 General legal and institutional framework

3.164. Since 2011, the institutional and legal framework for subsidies and other assistance in the EU has not changed substantially.<sup>164</sup> They continue to be granted at the EU level, i.e. out of the Union budget, and by member States.

3.165. The provision of state aid by EU member States is regulated by Articles 107 to 109 of the Treaty on the Functioning of the European Union (TFEU). State aid is deemed incompatible with the internal market of the EU if it distorts competition by favouring certain undertakings or the production of certain goods.<sup>165</sup>

3.166. Under Article 108 of the TFEU, the Commission has the authority to determine if state aid is compatible with the internal market. In doing so, the Commission is required to weigh the benefits of the aid towards achieving objectives of common European interest against the distortions it may cause to competition and trade. Any plan to grant or alter aid shall be notified to and approved by the Commission. Certain categories of aid are however exempt from that procedure (General Block Exemption Regulation – "GBER"). The GBER applies to, *inter alia*, aid for: disadvantaged regions; small- and medium-sized enterprises; female entrepreneurship; environment protection; training; research, development and innovation; risk capital; and disadvantaged or disabled workers.

3.167. In addition, the "*de minimis* regulation" provides that state aid below €200,000 spent over a three-year period is deemed to have no substantial effect on competition and trade between member States, and therefore requires no notification.

<sup>161</sup> SPC Network online information. Viewed at: <http://spcnetwork.eu/news/item/database-of-state-owned-enterprises-in-the-european-union>.

<sup>162</sup> OECD (2011b).

<sup>163</sup> European Commission document SWD(2012) 14 Final, 10 February 2012. Viewed at: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/swd\\_guidance\\_paper\\_en.pdf](http://ec.europa.eu/competition/state_aid/studies_reports/swd_guidance_paper_en.pdf).

<sup>164</sup> WTO document WT/TPR/S/248, 8 July 2011.

<sup>165</sup> See definition of "state aid" in Article 107(1), Treaty of the Functioning of the European Union.

3.168. Rules for the compatibility assessment of state aid are set out in specific Commission guidelines. They are detailed in a number of "horizontal" or "sectoral" guidelines: horizontal guidelines for regional aid, research, development, innovation, risk capital, environmental aid, training aid, and aid for disadvantaged or disabled workers; sector-specific guidelines for the financial sector, agriculture, audio-visual production, broadband (new guidelines adopted in 2012)<sup>166</sup>, broadcasting, coal industry, electricity, fisheries, postal services, shipbuilding (new guidelines adopted in 2011)<sup>167</sup>, steel, synthetic fibres, motor vehicles industry, and transport.

3.169. In 2004, the Commission adopted rules for state aid for rescuing and restructuring of firms in difficulty.<sup>168</sup> They were set to expire in October 2012, but were extended until end-2013, at which time all state aid regulations are to be updated.

3.170. Services of General Economic Interest (SGEI) are economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there were no public intervention. SGEI in the transport sector, and construction, management and maintenance of infrastructure benefit from substantial public resources in the EU. Since January 2012 new regulations entered into force setting the criteria for state aid for SGEI to be compatible with state-aid rules, and cases where no prior notification is necessary.<sup>169</sup> The *de minimis* amount for state aid for SGEI was increased in April 2012 from €200,000 to €500,000 spent over three fiscal years. In 2011, several state-aid measures were approved under the SGEI framework in the transport subsector.

3.171. On 8 May 2012 the Commission launched a Communication on State Aid Modernisation (SAM), by introducing a reform package, the main reforms of which should be in place by the end of 2013. The objective of the SAM is to make state aid more supportive for sustainable growth without distorting competition. Action envisaged under this reform includes the identification of common principles for the compatibility assessment of state aid, an increased focus on the cases with the biggest impact, and the simplification of rules and procedures. In particular, the main compatibility guidelines, the "*de minimis*" regulation, the GBER, the Procedural Regulation are set to be reviewed under the package.

### 3.3.2.2 Regional assistance

3.172. The EU's latest subsidies notification to the WTO and member States' addenda, submitted in July 2011, contained statistical information up to end-2010.<sup>170</sup> The two largest areas of expenditure out of the EU budget were agriculture (chapter 4.1) and structural actions, i.e. the Structural Funds and the Cohesion Fund. Another notable area of expenditure is research. The Structural Funds comprised the European Regional Development Fund (ERDF), and the European Social Fund (ESF).

3.173. The goal of the Cohesion Policy is to promote social and economic cohesion in the EU, by reducing disparities between regions and countries. The Cohesion Policy is put in place for a seven-year period. The current cycle is set to be completed by end-2013. The budget and the framework of the Cohesion Policy for 2014-2020 are currently being developed. For the period 2007-2013, the EU's intervention in the field of the Cohesion Policy is being realised through the Structural Funds (the European Regional Development Fund, the European Social Fund, and the Cohesion Fund).

3.174. According to the latest notification, outlays under the European Regional Development Fund, the Cohesion Fund, and the European Social Fund totalled over €49 billion in 2010, the latest year available.

<sup>166</sup> See European Commission online information. Viewed at: [http://ec.europa.eu/competition/state\\_aid/legislation/specific\\_rules.html](http://ec.europa.eu/competition/state_aid/legislation/specific_rules.html).

<sup>167</sup> European Commission (2012a).

<sup>168</sup> For more details see OJ C244, "Community guidelines on state aid for rescuing and restructuring firms in difficulty", 1 October 2004.

<sup>169</sup> State aid legislation compilation in *Official Journal of the European Union*, 11 January 2012. Viewed at: [http://ec.europa.eu/competition/state\\_aid/legislation/compilation/j\\_23\\_05\\_12\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/compilation/j_23_05_12_en.pdf).

<sup>170</sup> WTO document G/SCM/N/220/EEC, 10 October 2011. Subsidies granted by individual member States are contained in addenda to this notification.

3.175. The total allocation on structural and cohesion funds, over 2007-2013, amounted to €347 billion (€201 billion for the ERDF, €76 billion for the ESF and the Cohesion Fund €70 billion). Additional funding from the member States will bring the total amount spent to €700 billion. Based on the objectives for the different funds, the allocations are: €283 billion for convergence; €55 billion for Competitiveness and Employment; and €9 billion for European Territorial Co-operation.<sup>171</sup>

3.176. Regions that are economically, socially or environmentally disadvantaged are given preference under the ERDF. The fund is given for three different objectives, namely convergence, regional competitiveness and employment, and European territorial cooperation. It is used mostly to finance investments made by SMEs for jobs creation, infrastructure, financial instruments or technical assistance.

3.177. The European Social Fund is used with regard to the EU objectives of convergence and regional competitiveness and employment. It is mainly used to finance projects in education and job market improvement, with a special focus on disadvantaged groups of population.

3.178. In principle, the Cohesion Fund is designed for member States with a GNI per capita of less than 90% of the Community's average. Under the current programme, the following countries are eligible to receive funds: Bulgaria, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, and Slovenia. Projects in this context must be related to the improvement of trans-European transport networks or environmental protection.<sup>172</sup>

3.179. Assistance for candidate countries to help them prepare for implementation of the Cohesion Policy after accession is provided through the Instrument for Pre-Accession Assistance (IPA).

3.180. In addition, the European Globalisation Adjustment Fund (EGF) was set up in 2007 to help workers made redundant as a result of globalisation to return to employment. According to the Commission, for the period May 2009 to December 2011, the scope of the Fund was broadened to include workers made redundant as a result of the global financial and economic crisis. By the end of 2012, the Fund had received applications totalling almost €450 million and targeting almost 100,000 redundant workers. Twenty member States had implemented over 100 EGF cases; these were in support of workers made redundant in a broad range of sectors, from basic metals to manufacturing (automotive, textiles and numerous others), construction and services.

### 3.3.2.3 Non-crisis aid at member-State level

3.181. Updated information on state aid provided by EU member States is regularly published by the Commission through the state-aid scoreboard.

3.182. In 2010 and 2011 respectively €73.3 billion (0.6% of EU GDP) and €64.3 billion (0.5% of EU GDP) were provided for non-crisis state aid. Fourteen member States increased their average state-aid levels between the period 2006-2008 and 2009-2011. Relative to economic size, Malta, Portugal and Hungary recorded the highest levels of non-crisis aid in the EU. Malta spent more than 2%, Portugal more than 1.5% and Hungary more than 1.2%. Non-crisis state aid was 0.4% of national GDP or less in Lithuania, Bulgaria, Estonia, Italy, Luxembourg, Romania, Netherlands, Spain, Slovakia, Latvia, and the United Kingdom.

3.183. Aid to industry and services amounted to €52.9 billion (over 82% of non-crisis aid) or 0.42% of EU GDP. Other substantial recipients of non-crisis state aid are: agriculture (13% of total aid), and transport (5%). Fisheries and aquaculture get less than 0.2%.<sup>173</sup>

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<sup>171</sup> European Commission, online information. Viewed at: [http://ec.europa.eu/regional\\_policy/thefunds/funding/index\\_en.cfm](http://ec.europa.eu/regional_policy/thefunds/funding/index_en.cfm).

<sup>172</sup> European Commission, online information. Viewed at: [http://ec.europa.eu/regional\\_policy/thefunds/cohesion/index\\_en.cfm](http://ec.europa.eu/regional_policy/thefunds/cohesion/index_en.cfm).

<sup>173</sup> European Commission document SWD(2012) 443 final, 21 December 2012. Viewed at: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/2012\\_autumn\\_working\\_paper\\_en.pdf](http://ec.europa.eu/competition/state_aid/studies_reports/2012_autumn_working_paper_en.pdf).

3.184. 90% of state aid to industry and services was earmarked for horizontal objectives of common interest, i.e. aid that is not granted to specific sectors of the economy (most notably aid measures for regional development, research, and environmental protection).<sup>174</sup> Only Malta and Portugal spent less than half of their state aid on horizontal objectives.

3.185. In 2011, regional development was the horizontal objective to which most resources were directed (26% of total aid to industry and services), followed by the environment (23%) and research, development and innovation (19%). SMEs, employment, training, risk capital, and other, received the least funds.

3.186. Member States used mostly grants (58%) as instruments for state aid, followed by tax exemptions (36%), while soft loans and guarantees, equity participation and "other" together made up about 6%. However, the use of instruments differs widely among member States. Denmark, Cyprus, Luxembourg, and the Netherlands used grants for more than 90% of state aid to industry and services, whereas Portugal and Sweden for example used more than 80% for tax exemptions.

### 3.3.2.4 Crisis-related aid

3.187. Since the onset of the global economic and financial crisis in 2008, the EC has issued a number of guidelines geared at disciplining member States' assistance measures to firms in difficulty. These measures were rolled out through two different subcomponents:

- financial institutions (state-aid rules to support measures in favour of banks in the context of the financial crisis); and
- the real economy (Temporary Union framework for state-aid measures to support access to finance in the current financial and economic crisis – "Temporary framework").<sup>175</sup>

3.188. The Temporary framework to ease access to finance expired in December 2011. No new aid measure was implemented in 2011 under the framework. However, the Commission allowed 23 schemes to be extended:

- ten for aid of up to €500,000 per company, in the Czech Republic, Estonia, Greece, France, Latvia, Lithuania, the Netherlands, Austria, Portugal, and the United Kingdom;
- eight guarantee schemes in Greece, Spain, France, Luxembourg, Hungary, and Romania;
- three schemes for subsidized interest rate loans, in the Czech Republic, France, and Hungary; and
- two schemes for subsidized interest rate loans to produce green products, in Germany and France.

3.189. The state-aid rules to support measures in favour of banks in the context of the financial crisis were extended twice, in 2010 and 2011. In fact, of the four Communications from the Commission on state aid to financial institutions issued since 2008<sup>176</sup>, only the "Communication on the return to viability and the assessment of restructuring measures in the financial sector" had a specified expiry date, and, in December 2010, it was extended through the "prolongation

<sup>174</sup> Aid granted under block exemption is included under horizontal aid.

<sup>175</sup> WTO document WT/TPR/S/248, 1 June 2011.

<sup>176</sup> The Communications in question are: the Communication on the application of state-aid rules to measures taken in relation to financial institutions in the context of the current financial crisis (the Banking Communication); the Communication on the recapitalisation of financial institutions in the context of the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition (the Recapitalisation Communication); the Communication from the Commission on the treatment of impaired assets in the community banking sector (the Impaired Assets Communication), and the Communication on the return to viability and the assessment of restructuring measures in the current crisis under the State aid rules (the Restructuring Communication).

communication" until 31 December 2011.<sup>177</sup> However, each of the Communications refers to the temporary nature of such aid measures. According to the Commission, in spite of the recent signs of economic recovery within the Union and the relative improvement in the banking sector, the prolongation communication is justified in consideration of a number of factors such as the existence of some pockets of vulnerability that could provoke negative effects. In addition, the occurrence of increased tensions in the sovereign debt market and the threat it represents for the financial institutions within the region further justify the possibility for member States to continue with their crisis-related support to their banks.

3.190. The Commission is committed to a gradual exit from the temporary exceptional situation and to create suitable conditions for permanent state-aid rules. In 2010, it carried out an assessment of government guarantees in terms of both the frequency of recourse to them and the economic benefits they yield. It turned out that, as regard the recourse to guarantees, the number of banks resorting to government guarantees has decreased over the period of assessment (2008-2009) reflecting an exit process by individual banks. The same trend was also observed at member-State level, with four member States having discontinued their schemes in 2009. Furthermore, the cost of funding with guarantees has fallen relative to the cost of funding via unsecured debt. These developments may constitute signals for positive developments in market conditions and a gradual return to a more stable situation for banks. As a consequence, the competition context between banks that issue guaranteed bonds and those that issue strictly under market conditions is likely to become an issue.<sup>178</sup>

3.191. Since 1 July 2010, the Commission has restricted the conditions for the compatibility of government guarantees under Article 107(3)(b) of the Treaty. These restrictions include an increased guarantee fee and tighter requirements for viability plans for beneficiaries that have recourse to new guarantees and exceed a certain threshold of total outstanding guaranteed liabilities. The increase (relative to the pricing formula recommended by the ECB in October 2008) in the fee for a government guarantee ranged between 20 basis points to 40 basis points depending on the ratings of the beneficiaries. Above certain thresholds<sup>179</sup>, a viability requirement is necessary, i.e. for any bank that requests government guarantees under a scheme covering new or renewed debt to be issued as from 1 July 2010, the member State concerned would be required to submit a review demonstrating the bank's long-term viability to the Commission within three months of the granting of guarantees.

3.192. At the beginning of the financial crisis, a distinction was established between "structurally sound" and "unsound" banks, i.e. those suffering from the fragility/inefficiency of their structural organization, and those whose problems are mostly linked to the financial crisis.<sup>180</sup> The recapitalisation of an "unsound" bank was subject to the submission to the Commission of a restructuring plan, while a viability plan was required in the case of a "sound" bank. The Prolongation Communication has also taken an additional step toward the disengagement from the temporary extraordinary support measures for banks. It included the recapitalisation and impaired-asset measures into the phasing out process.

3.193. Based on the rationale that the situation in the capital market has sufficiently improved to allow banks to raise capital on the markets, the Commission considered that the distinction between banks, on the basis of the soundness of their structural organization, is no longer relevant. Therefore, the Prolongation Communication required banks which continued to recourse to the exceptional state-aid opportunities, in 2011, to submit a restructuring plan to the Commission regardless of their status.

3.194. Increased tensions in sovereign debt markets since 2011 have put the EU banking sector under increased pressure, and this has led the Commission to prolong its crisis-related rules under the "banking package" agreed by the Heads of State or Government at their meeting of 26 October 2011.

<sup>177</sup> *Official Journal of the European Union*, "Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis", 7 December 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:329:0007:0010:EN:PDF>.

<sup>178</sup> DG Competition (2010).

<sup>179</sup> The threshold is set at a ratio of 5% of outstanding guaranteed liabilities over total liabilities and a total amount of €500 million.

<sup>180</sup> The distinction is based on a set of indicators defined in the Recapitalisation Communication.

3.195. "The package aims to restore confidence in the sector by way of guarantees on medium-term funding and the creation of a temporary buffer amounting to a capital ratio of 9% of the highest quality capital after counting for market valuation of sovereign debt exposures".<sup>181</sup>

3.196. The Communication adopted by the Commission on the application, from 1 January 2012, of state-aid rules to support measures in favour of banks in the context of the financial crisis, keeps in place the four Communications that regulate the exceptional State aid measures to banks.

3.197. The Communication also brought some changes in the pricing for state recapitalisations and guarantees. In fact, under the Recapitalisation Communication, the pricing of capital injections is based mainly on capital instruments bearing a fixed remuneration. The Communication adopted by the Commission on the application, from 1 January 2012, of state-aid rules to support measures in favour of banks in the context of the financial crisis comes up with the view that states' capital injections may take the form of shares bearing a variable remuneration.

3.198. In the context of this Communication, revised minimum fees are established for guarantees covering debt with a maturity between one and five years (seven years in the case of covered bonds).

3.199. Concerning the way the Commission will undertake the assessment of long-term viability, in order to determine the need for restructuring, attention will be given to, *inter alia*, the extent to which the capital shortage is essentially linked to a confidence crisis on sovereign debt, and evidence that the bank in question did not take excessive risks in acquiring sovereign debt.

3.200. In the context of the "exceptional" situation in the financial sector, the European Commission took 350 decisions between 1 October 2008 and 1 October 2012, in order to authorize, amend or prolong over 50 schemes. In addition, except from Bulgaria, the Czech Republic, Estonia, Malta and Romania, all EU member States have resorted to state-aid measures in the financial sector.

3.201. The amount of aid approved decreased over 2008-2011 (Table 3.10). However, this does not denote improving economic conditions, as the coexistence of sovereign-debt tensions and weaknesses in the banking sector continue to require alternative support measures (sometimes in the form of Central Bank interventions).

**Table 3.10 Approved amount of aid, by instrument, 2008-11**

(EU-27)

	2008		2009		2010		2011	
	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP
Outstanding guarantees	3,097.34	24.8	87.63	0.7	54.81	0.4	179.70	1.4
Recapitalisation	269.87	2.16	110.04	0.93	184.01	1.5	37.47	0.3
Impaired assets	4.80	0.04	338.50	2.87	77.98	0.6	6.30	0.05
Liquidity interventions	85.48	0.7	5.49	0.05	66.75	0.5	50.23	0.4
<b>Total</b>	<b>3,457.49</b>	<b>27.7</b>	<b>541.66</b>	<b>4.55</b>	<b>383.55</b>	<b>3</b>	<b>273.70</b>	<b>2.15</b>

Source: European Commission document SEC(2012) 443 final, 21 December 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0443:FIN:EN:PDF>.

3.202. From October 2007 to December 2011, the Commission approved €5,086 billion (40.3% of EU GDP), with the bulk of the aid being authorized in 2008 in the form of guarantees for banks' bonds and deposits (Tables 3.11 and 3.12). Between 2007 and 2011, an amount of €1,616 billion was used on guarantees (€1,085 billion), recapitalisation (€322 billion), impaired assets (€120 billion), and liquidity measures (€89 billion).

<sup>181</sup> Official Journal of the European Union, "Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis", 6 December 2011, Viewed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:356:0007:0010:EN:PDF>.



**Table 3.11 Approved amount of aid to financial institutions, by instrument and member State, 2008-11**

	Recapitalisation measures		Guarantees		Asset relief intervention		Liquidity measures		Total 2008-11	
	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP
Austria	15.65	5.2	75.20	25.0	0.40	0.1	0.00	0.0	91.25	30.3
Belgium	20.40	5.5	303.95	82.5	28.22	7.7	0.00	0.0	352.57	95.7
Bulgaria	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0
Cyprus	0.00	0.0	3.00	16.9	0.00	0.0	0.00	0.0	3.00	16.9
Czech Republic	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0
Denmark	14.03	5.9	580.00	242.4	0.00	0.0	6.08	2.5	600.11	250.8
Estonia	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0
Finland	4.00	2.1	50.00	26.4	0.00	0.0	0.00	0.0	54.00	28.5
France	26.65	1.3	336.15	16.8	4.70	0.2	0.00	0.0	367.50	18.4
Germany	113.68	4.4	455.85	17.7	65.40	2.5	9.50	0.4	644.43	25.1
Greece	15.47	7.2	85.00	39.5	0.00	0.0	8.00	3.7	108.47	50.4
Hungary	1.07	1.1	5.35	5.3	0.04	0.0	3.87	3.9	10.33	10.3
Ireland	90.61	57.9	386.00	246.7	54.00	34.5	40.73	26.0	571.34	365.2
Italy	20.00	1.3	80.00	5.1	0.00	0.0	0.00	0.0	100.00	6.3
Latvia	0.83	4.1	5.15	25.7	0.54	2.7	2.26	11.3	8.78	43.8
Lithuania	0.58	1.9	0.29	0.9	0.58	1.9	0.00	0.0	1.45	4.7
Luxembourg	2.50	5.8	5.80	13.5	0.00	0.0	0.32	0.7	8.62	20.1
Malta	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0
Netherlands	37.64	6.3	200.00	33.2	22.79	3.8	52.90	8.8	313.33	52.0
Poland	4.62	1.2	4.62	1.2	0.00	0.0	0.00	0.0	9.24	2.5
Portugal	12.00	7.0	35.45	20.7	0.00	0.0	0.00	0.0	47.45	27.8
Romania	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0
Slovakia	0.66	1.0	2.80	4.1	0.00	0.0	0.00	0.0	3.46	5.0
Slovenia	0.25	0.7	12.00	33.7	0.00	0.0	0.00	0.0	12.25	34.4
Spain	101.10	9.4	201.15	18.7	2.86	0.3	31.85	3.0	336.96	31.4
Sweden	5.03	1.3	156.00	40.3	0.00	0.0	0.52	0.1	161.56	41.8
United Kingdom	114.61	6.6	435.71	24.9	248.05	14.2	51.93	3.0	850.30	48.7
<b>EU-27</b>	<b>601.39</b>	<b>4.8</b>	<b>3,419.47</b>	<b>27.1</b>	<b>427.58</b>	<b>3.4</b>	<b>207.96</b>	<b>1.6</b>	<b>4,656.41</b>	<b>36.9</b>

Source: European Commission document SEC(2012) 443 final, 21 December 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0443:FIN:EN:PDF>.

**Table 3.12 Used amount of aid to financial institutions, by instrument and member State, 2008-11**

	Recapitalisation measures		Guarantees		Asset relief intervention		Liquidity measures		2008-11	
	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP
Austria	7.38	2.45	19.33	6.43	0.40	0.13	0.00	0.00	27.11	9.01
Belgium	20.40	5.54	44.23	12.01	7.73	2.10	0.00	0.00	72.36	19.65
Bulgaria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.0	0.00	0.00
Cyprus	0.00	0.00	2.83	15.91	0.00	0.00	0.00	0.00	2.83	15.91
Czech Republic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.0	0.00	0.00
Denmark	10.77	4.50	145.00	60.61	0.00	0.00	1.97	0.82	157.75	65.94
Estonia	0.00	0.00	0.00	0.00	0.00	0.0	0.00	0.00	0.00	0.00
Finland	0.00	0.00	0.12	0.06	0.00	0.00	0.00	0.00	0.12	0.06
France	22.46	1.12	92.73	4.64	1.20	0.06	0.00	0.00	116.39	5.83
Germany	63.24	2.46	135.03	5.25	56.17	2.19	4.75	0.18	259.19	10.08
Greece	6.30	2.93	56.30	26.17	0.00	0.00	6.90	3.21	69.49	32.31
Hungary	0.11	0.11	0.01	0.01	0.00	0.00	2.13	2.12	2.24	2.23
Ireland	62.78	40.13	284.25	181.70	2.60	1.66	0.08	0.05	349.71	223.54
Italy	4.05	0.26	10.90	0.69	0.00	0.00	0.00	0.00	14.95	0.95
Latvia	0.51	2.53	0.54	2.69	0.41	2.03	0.97	4.86	2.43	12.12
Lithuania	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.0	0.00	0.00
Luxembourg	2.60	6.07	1.65	3.84	0.00	0.00	0.19	0.44	4.43	10.35
Malta	0.00	0.00	0.00	0.00	0.00	0.0	0.00	0.00	0.00	0.00
Netherlands	18.86	3.13	40.90	6.79	5.00	0.83	30.40	5.05	95.16	15.80
Poland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.0	0.00	0.00
Portugal	0.00	0.00	8.54	5.00	3.10	1.81	3.81	2.23	15.45	9.04
Romania	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Slovakia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Slovenia	0.25	0.70	2.15	6.03	0.00	0.00	0.00	0.00	2.40	6.73
Spain	19.31	1.80	62.20	5.79	2.86	0.27	19.31	1.80	103.68	9.66
Sweden	0.78	0.20	19.92	5.15	0.00	0.00	0.00	0.00	20.70	5.35
United Kingdom	82.39	4.72	158.22	9.06	40.41	2.31	18.55	1.06	299.57	17.15



	Recapitalisation measures		Guarantees		Asset relief intervention		Liquidity measures		2008-11	
	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP	€ billion	% of 2011 GDP
EU-27	322.18	2.55	1,084.83	8.59	119.88	0.95	89.06	0.70	1,615.96	12.79

Source: European Commission document SEC(2012) 443 final, 21 December 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0443:FIN:EN:PDF>.

### 3.3.3 Government procurement

#### 3.3.3.1 Legislative framework

3.203. Government procurement in the EU accounts for a significant share of its total economic activity, with possible implications for economic growth and the European single market.<sup>182</sup> In 2010, EU public expenditures totalled €2,407 billion,<sup>183</sup> comprising 19.7% of the EU GDP (compared to 16% in 2006), of which €447 billion, according to Commission estimates, was procurement subject to EU rules, i.e. above the threshold.<sup>184</sup>

3.204. All procurement carried out in the EU above specified thresholds must comply with the requirements of the EU Directives on procurement, which are reflected in relevant legislation and regulations of the EU member States.<sup>185</sup> Directive 2004/18/EC (Public Procurement Directive) covers the procedures for the award of public work contracts, public supply contracts, and public services contracts; and Directive 2004/17/EC (Utilities Directive) covers procurement procedures of entities in the domains of water, energy, transport, and postal sectors. According to the Commission, these Procurement Directives have been transposed into member States' national legislation.

3.205. In compliance with the Directives on procurement, above-threshold public procurement must be advertised EU-wide and must follow uniform procedures. Entering into force on 1 January 2012, the latest thresholds on procurement of supplies, services, and construction works under the three Directives are specified in Commission Regulation (EC) No. 1251/2011, 30 November 2011, amending Directives 2004/17/EC and 2004/18/EC and 2009/81/EC (Table 3.13).<sup>186</sup>

**Table 3.13 Minimum public procurement thresholds, 2010-13<sup>a</sup>**

(€ '000)

	Supplies		Services		Works	
	2010-11	2012-13	2010-11	2012-13	2010-11	2012-13
<b>Public contracts, other than for utilities</b>						
EU central contracting authorities	125	130	125	130	4,845	5,000
Other public sector contracting authorities	193	200	193	200	4,845	5,000
Contracts subsidized at more than 50% by the contracting authority <sup>b</sup>	n.a.	n.a.	193	200	4,845	5,000

<sup>182</sup> European Commission document COM(2010) 2020 final, 3 March 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>.

<sup>183</sup> Total public expenditure is the public spending on health, defence and fuel for production of energy, rail and other expenditures. The Commission indicates that the total value of public expenditure is VAT inclusive.

<sup>184</sup> European Commission (2011a). The Commission stated that it does not exact figures for below-threshold procurement. Based on 2008 data, it was estimated that about €250 billion was the procurement below the threshold. See European Commission document SEC(2011) 853 final, 27 June 2011. Viewed at: [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/er853\\_1\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/er853_1_en.pdf). The procurement value is VAT exclusive.

<sup>185</sup> Rules on public procurement of the EU can be found on the European Commission online information, "DG MARKT: Rules for contracting authorities/entities". Viewed at: [http://ec.europa.eu/internal\\_market/publicprocurement/rules/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/rules/index_en.htm).

<sup>186</sup> WTO documents GPA/W/309/Add.4, 5 February 2010; and GPA/W/314/Add.6, 23 February 2012.

	Supplies		Services		Works	
	2010-11	2012-13	2010-11	2012-13	2010-11	2012-13
Service designs contests						
Central government authorities	n.a.	n.a.	125	130	n.a.	n.a.
Other authorities	n.a.	n.a.	193	200	n.a.	n.a.
Specific sectors <sup>c</sup>	n.a.	n.a.	193	200	n.a.	n.a.
<b>Utilities<sup>d</sup></b>						
All sectors, except service designs contests	387	400	387	400	4,845	5,000
Service designs contests	n.a.	n.a.	387	400	n.a.	n.a.

n.a. Not applicable.

a Threshold amounts do not include VAT.

b Contracts that are subsidized at more than 50% by the contracting authorities involve either civil engineering to build hospitals, facilities intended for sports, recreation and leisure, school and university buildings, and buildings used for administrative purposes or the services connected to the aforementioned types of projects.

c Specific sectors refer to fields of research and development, telecommunications (CPC Reference No. 752), hotel and restaurant services, transport by rail and waterway, provision of personnel, vocational training, investigation and security, legal, health and social, recreational, cultural and sporting services.

d Utilities include water, energy, transport, postal and telecommunications services.

Source: Commission Regulation (EC) No. 1251/2011, 30 November 2011, amending Directives 2004/17/EC and 2004/18/EC and 2009/81/EC; and WTO documents GPA/W/309/Add.4, 5 February 2010; and GPA/W/314/Add.6, 23 February 2012.

3.206. Public procurement policy in the EU aims to achieve the best value for money through open, transparent and non-discriminatory procedures, consistent with the underlying objectives of the internal market. The Directives also mention other aspects such as social, innovation, and environmental considerations that can be incorporated into technical specifications, selection and award criteria, as well as contract-performance clauses. Contracting authorities may lay down specific environmental conditions relating to the performance of the contract and may ask for evidence of environmental management measures.<sup>187</sup> While the Green Public Procurement policy is voluntary, the European Court of Justice case law has shown that "it is acceptable to make use of environmental/ecological award criteria, even if the criterion in question doesn't provide an immediate economic benefit for the contracting authority."<sup>188</sup>

3.207. Procurement procedures for contract awards by public authorities and utility operators in the water, energy, transport, and postal services sectors are regulated separately by Directive 2004/17/EC (Utilities Directive). While in some member States utilities are private sector companies operating in a fully commercial environment, in others they are state-owned monopolies or oligopolies, or they compete with private companies. Private contracting entities in the utilities sector may also be covered by the Utilities Directive if they have a special or exclusive right granted by member states.<sup>189</sup> Given the variety of ways that member States can influence the behaviour of these entities and the closed nature of the markets in which they often operate, the Directive aims to ensure a fair balance in the application of procurement rules in the utilities sector.

3.208. In specific utility markets where entities operate in a competitive environment to which market access is not restricted, the Utilities Directive grants exemptions from the procurement rules, upon the Commission's approval, when it considers the existing competitive conditions ensure that contracting entities, state-owned or private, buy commercially without favouring their national industry. In such cases it is considered that procurement regulation is not needed. During the period under review, the Commission approved some member States' requests to exempt specific markets.<sup>190</sup>

<sup>187</sup> OECD and European Union (2011a).

<sup>188</sup> The 'Wienstrom' case (Case C-448/01 of 4 December 2003).

<sup>189</sup> However, if a specific right can be obtained by all or nearly all applicants (thus avoiding a monopolistic or oligopoly situation), companies will not be subject to the Utilities Directive.

<sup>190</sup> Certain financial services in the postal sector in Hungary (16 December 2011), production and wholesale of electricity in Italy (26 September 2012), production and wholesale of electricity in Germany

3.209. In December 2011, the Commission adopted its new legislative proposals on public procurement, which include the revision of the "Utilities Directive" and the "Public Procurement Directive", as well as a Directive on concessions.<sup>191</sup> The proposed new Directive on concessions covers not only works of maintenance and development of infrastructures but also the services supplies of general economic interest (e.g. energy, health, water supply and treatment, and waste disposal). The Commission aims to make the public procurement regime more comprehensive by including services concessions which are currently only partially regulated at EU level. Taking a similar approach to other procurement Directives, the proposed Concessions Directive requires mandatory publication of tenders for concession contracts in the *Official Journal of the European Union* if the contract value exceeds €5 million. Also in the proposals, individual member States are to establish a national independent body to oversee the implementation of EU procurement rules, which the Commission believes will enhance their enforcement.

3.210. Procurement above the stipulated thresholds must be published in the *Official Journal* (OJ) (S series) which may be accessed online through the TED website.<sup>192</sup> In 2010, on average, there were five bids per procedure published in TED.<sup>193</sup> In the same time period, the total value of invitations to tender for contracts above thresholds was estimated to be approximately €447 billion,<sup>194</sup> representing 3.7% of the EU GDP and 14.6% of total procurement in the EU. In 2010, published procurements varied among member States, ranging between 1.5% and 11.6% of member States' GDP and between 6.1% and 57.3% of member States' total procurement (Table 3.14). The Commission indicates that differences in percentages of procurement published in the OJ might be explained by, for example, the small value of individual contracts, and the various degrees of centralization across member States: most of the smaller contracting authorities may never make a purchase large enough to fall into the scope of the Directives, and member States with a generally higher degree of centralization are more likely to have tender invitations published in the OJ because procurement tends also to be centralized.<sup>195</sup> The Commission also points out that publication requirements for below-threshold procurement vary across member States, and are established on a voluntary basis at EU level. In some member States, contracting entities thus publish below-threshold procurement, whereas some publish above-threshold procurement only.

**Table 3.14 Selected procurement indicators, 2008-10**

	Value of procurement published in the OJ					
	As a percentage of GDP			As a percentage of total public procurement		
	2008	2009	2010	2008	2009	2010
Austria	2.4	2.3	2.3	11.6	10.3	10.0
Belgium	3.6	4.0	3.1	22.8	23.5	18.5
Bulgaria	8.4	11.9	6.4	42.0	63.3	34.8
Cyprus	4.7	8.3	5.2	51.7	78.6	49.1
Czech Republic	5.3	5.2	5.6	20.9	19.6	21.5
Denmark	3.0	4.0	4.4	18.7	22.5	25.0
Estonia	8.1	8.3	10.6	43.5	39.9	54.6
Finland	3.9	4.8	4.6	22.5	24.6	23.6
France	5.4	6.4	7.4	21.1	20.5	18.3
Germany	1.2	1.4	1.3	6.9	7.4	6.9
Greece	2.8	3.7	2.4	23.3	29.7	22.0
Hungary	5.1	6.3	5.6	25.4	27.7	24.5
Ireland	2.5	2.2	2.3	15.5	13.8	14.6

(24 April 2012), exploration for oil and gas and extraction of oil in Denmark (28 July 2011), exploration for oil and gas and extraction of oil in Italy (24 June 2011).

<sup>191</sup> For details, see European Commission online information, "DG MARKT: Reform proposals". Viewed at:

[http://ec.europa.eu/internal\\_market/publicprocurement/modernising\\_rules/reform\\_proposals/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals/index_en.htm).

<sup>192</sup> Tenders Electronic Daily, Supplement to the *Official Journal of the European Union* online information. Viewed at: <http://ted.europa.eu/>.

<sup>193</sup> DG Internal Market and Services (2012), page 11.

<sup>194</sup> European Commission document SWD(2012) 342 final, 9 October 2012, page 7. Viewed at: [http://ec.europa.eu/internal\\_market/publicprocurement/docs/implementation/20121011-staff-working-document\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/implementation/20121011-staff-working-document_en.pdf).

<sup>195</sup> European Commission document SEC(2011) 853 final, 27 June 2011. Viewed at: [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/er853\\_1\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/er853_1_en.pdf).

	Value of procurement published in the OJ					
	As a percentage of GDP			As a percentage of total public procurement		
	2008	2009	2010	2008	2009	2010
Italy	2.3	2.5	3.4	15.4	15.3	21.0
Latvia	9.7	8.6	11.5	61.1	42.1	57.3
Lithuania	3.6	4.9	4.9	22.2	29.0	26.9
Luxembourg	1.3	1.5	1.5	9.2	9.7	9.5
Malta	1.2	6.9	4.2	8.8	50.2	31.4
Netherlands	1.9	2.0	1.9	6.9	6.7	6.1
Poland	7.1	8.2	8.7	38.9	41.2	42.6
Portugal	2.5	3.4	4.1	14.1	16.9	19.5
Romania	7.4	6.4	6.2	31.6	25.0	23.3
Slovakia	3.7	6.8	11.6	17.1	28.5	48.8
Slovenia	5.1	6.0	4.6	31.9	34.5	26.3
Spain	3.6	3.4	3.2	22.7	19.7	19.9
Sweden	3.5	4.3	4.9	19.3	21.0	24.5
United Kingdom	4.4	6.2	6.5	21.4	26.0	28.2
EU-27	3.1	3.6	3.7	17.4	18.0	18.6

Source: Eurostat, Public procurement advertised in the *Official Journal* (Last update: 06-03-2012). Viewed at: <http://appsso.eurostat.ec.europa.eu/nui/show.do>.

3.211. The share of published procurement in total procurement varies significantly between years for some member States, for example, Bulgaria published 42% of its total procurement in 2008, 63.3% in 2009, and 34.8% in 2010 (Table 3.14). According to the Commission, such wide variation may reflect procurement of infrastructure construction in certain years for some member States.

3.212. After a contract is awarded, the contracting authority should announce in the OJ/TED the result of the procurement procedure, including the total value and details of the winning company.

3.213. In 2010, of the total value of contract award notices published in the OJ/TED, about 36% was for works contracts (€161 billion), 42% for services (€187 billion), and 22% for goods (€99 billion). In terms of the number of notices, services contracts accounted for about 47%, followed by goods (36%) and then works (17%).<sup>196</sup> In the same period, open competition, i.e. publication of a notice inviting all interested bidders to submit their tenders, accounted for approximately 73% of all contract award notices (accounting for 52% of the total value of contracts awarded and published), while restricted procedures accounted for 9% of contract award notices and 23% of the total value.<sup>197</sup> The main procurement procedures available under the Directives are open procedure, restricted procedure, competitive dialogue procedure, and negotiated procedure with prior publication of a contract notice.

3.214. In the proposals to "modernize" the procurement Directives, in December 2011 the Commission proposed "an increased possible use of negotiation through the competitive procedure with negotiation and prior publication". In response to concerns with regard to the risks involved in the increased use of negotiation, the Commission stated that it is conscious of the risk, and negotiations therefore must be supervised in a transparent manner: contracting authorities must specify at the time of prior publication the subject matter of the contract, the award criteria and the minimum requirements to be met, which may not be changed in the course of negotiations. Any change in those parts of the technical specifications must be communicated to all firms participating in the negotiations allowing them to submit new, adapted tenders. Before the negotiations are concluded, every interested supplier must be given the possibility to submit a final tender.<sup>198</sup>

<sup>196</sup> European Commission document SWD(2012) 342 final, 9 October, page 9. Viewed at: [http://ec.europa.eu/internal\\_market/publicprocurement/docs/implementation/20121011-staff-working-document\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/implementation/20121011-staff-working-document_en.pdf).

<sup>197</sup> European Commission document SEC(2011) 853 final, 27 June 2011. Viewed at: [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/er853\\_1\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/er853_1_en.pdf).

<sup>198</sup> European Commission document MEMO/11/931, "Commission proposals to modernise the European public procurement market - Frequently Asked Questions", 20 December 2011. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-11-931\\_en.pdf](http://europa.eu/rapid/press-release_MEMO-11-931_en.pdf).

3.215. Directive 2007/66/EC (Remedies Directive) provides legal remedies for breaches of EU procurement law, including a "standstill period," which requires contracting bodies to provide at least 10 days after deciding the winning bid before it can be signed, and more stringent rules against illegal direct awards of public contracts so that illegally awarded contracts may be rendered ineffective (or null and void) by national courts.

3.216. According to the Commission, below-threshold procurement was estimated at around €250 billion in 2008, accounting for 2% of EU GDP. The EU Procurement Directives do not apply to below-threshold procurements; and they are covered by national legislation. Therefore, there is no obligation for national authorities to follow EU Directives. However, contracting authorities and entities are still required to comply with the rules and principles of the TFEU, including those on transparency and competition, especially for contracts that are potentially of cross-border interest. Most member States have laws or regulations governing below-threshold procurement, sometimes covering contracts above and below thresholds in the same laws, although these laws may apply different rules to each group.<sup>199</sup> In a number of member States such as Bulgaria and Malta, there are different procedural requirements and time limits applying to two or three value-related bands for contracts below the level of the EU threshold, for example, different rules apply for each of the bands: below €5,000, between €5,000 and €15,000, and from €15,000 to the EU threshold.

3.217. There are "aggregation rules" in the procurement Directives regarding below-threshold procurement. For example, contracting authorities are required to aggregate the value of separate contract lots for works or services to be awarded at the same time for a particular project. The value of each of the individual contracts may be less than the relevant EU financial threshold, but when added together the total value of these sub-threshold contracts may exceed the threshold. In such a case, the Directive will generally apply to the award of each of those sub-threshold contracts.<sup>200</sup>

### 3.3.3.2 GPA and international procurement

3.218. The EU is a signatory to the WTO Agreement of Government Procurement (GPA), thus, relevant EU procurement Directives (i.e. the Public Procurement Directive and the Utilities Directive), in addition to member States' legislation, must comply with the GPA. The GPA applies to procurement contracts of value above certain specified thresholds. The EU notified its GPA thresholds for 2012-13<sup>201</sup>, which are the same as those under the EU Procurement Directives. Commission Regulation (EC) No. 1251/2011 states that one of the objectives of Directives 2004/17/EC and 2004/18/EC is to allow the contracting entities and the contracting authorities to comply with the obligation laid down in the GPA. Thus, the thresholds under those Directives are aligned to the Euro equivalents, rounded down to the nearest thousand, of the thresholds set out in the GPA.

3.219. Although the thresholds are the same, the coverage of the GPA is different from that of the Directives. The GPA covers entities, goods, and services, including construction services, as specified in EU's Appendix I. In 2009, out of the total €420 billion above-threshold procurement in the EU, some €352 billion was open to GPA Parties.<sup>202</sup>

3.220. In the conclusion of the GPA re-negotiation, improved EU commitments provide for further market access opportunities. New sectors and contracting authorities/entities now are included in the EU schedules, for instance, the European External Action Service at EU level and a number of central government contracting authorities and sub-central entities of member States.<sup>203</sup> In March 2013, the Commission adopted a proposal for a Council Decision on the conclusion of the revised GPA, in order to allow the EU to submit its instruments of acceptance.

3.221. In addition to the GPA, the EU has signed a number of bilateral agreements that include chapters on government procurement with CARIFORUM, Central America, Chile, Colombia, Iraq,

<sup>199</sup> OECD and European Union (2011b).

<sup>200</sup> More examples can be found in OECD and European Union (2011b).

<sup>201</sup> WTO document GPA/W/314/Add.6, 23 February 2012.

<sup>202</sup> European Commission document COM(2012) 124 final, 21 March 2012. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/march/tradoc\\_149243.pdf](http://trade.ec.europa.eu/doclib/docs/2012/march/tradoc_149243.pdf).

<sup>203</sup> WTO document GPA/113, 2 April 2012.



Mexico, Peru, South Korea, and Switzerland.<sup>204</sup> The negotiations with Ukraine are finalized and the text was initialled in July 2012. In December 2012 the negotiations with Singapore were finalized.<sup>205</sup> At the same time, the EU is negotiating with India on procurement following the EU-India Summit in February 2012, as well as with Canada, Georgia, Armenia, Malaysia, Moldova and MERCOSUR. Negotiations have been launched with Viet Nam and the launch of negotiations has been agreed with Japan and Morocco.<sup>206</sup> The Commission notes that all these free-trade agreements are to include provisions on public procurement.

3.222. There are currently no explicit provisions in the EU Directives generally excluding the participation of suppliers from third countries in the EU procurement market. The Commission indicates that participation in the GPA or in a bilateral agreement with the EU provides an enforceable right to access the EU procurement market covered by the EU's commitments under the GPA or a bilateral agreement. There are only two specific cases where the EU public procurement market can be closed to foreign bidders from third countries: the Utilities Directive contains provisions which allow contracting authorities to reject foreign bidders while the Defence Directive leaves it up to member States to decide whether or not to accept foreign bids.<sup>207</sup> The Commission indicated that 85% of procurement in the EU is opened to international competition via the GPA and FTAs concluded by the EU.

3.223. In March 2012, the Commission adopted a proposal for a Regulation on the access of third-country goods and services to the European Union's internal market in public procurement.<sup>208</sup> In the proposed Regulation, access of third-country goods and services to the EU's public procurement market may be made conditional upon the openness of their procurement market. According to the Commission, this does not concern goods and services originating in a country or countries with which the EU has concluded an international agreement in the field of public procurement, including market access commitments (like GPA and FTAs) and in respect of which the relevant agreement applies. There is a threshold of €5 million in the proposed Regulation: for above-threshold contracts, contracting authorities may exclude, subject to approval by the Commission, tenders comprising a significant part (e.g. more than 50%) of third-country content; below the threshold, there is a default rule of openness according to the Commission.<sup>209</sup> Furthermore, the Commission states that if it finds that restrictive practices exist and result in "lack of substantial reciprocity" and all attempts to consult and negotiate with the third country in question are in vain, the Commission may consider EU-wide restrictive measures.

### 3.3.3.3 Other developments

3.224. In 2004, the Commission adopted the Action Plan for implementing the legal framework for electronic public procurement, the increased use of which is expected to result in significant savings and improvements in efficiency and competition in the EU. The Public Procurement Directives contain relevant provisions for member States to introduce e-procurement, e.g. electronic publication of procurement notices, use of electronic means of communication, and electronic auctions. Since it is up to contracting authorities or suppliers in the majority of member States to decide whether to use electronic means, the transition is gradual: the use of e-procurement accounted for 5-10% of procurement procedures carried out across the EU. In 2012, 22% of enterprises surveyed used the Internet to access tender documents and specifications as well as e-procurement systems of public authorities. In order to increase the use of electronic procedures, the Commission adopted in December 2011 a legislative proposal to make them mandatory for certain phases of the procurement process by mid-2014. The aim is that they become the standard method of procurement (mandatory for all contracting authorities

<sup>204</sup> WTO document WT/TPR/248/Rev.1, 1 August 2011.

<sup>205</sup> European Commission online information. Viewed at: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/singapore/>.

<sup>206</sup> European Union Press Release MEMO/12/201, 21 March 2012. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-12-201\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-201_en.htm?locale=en).

<sup>207</sup> European Union Press Release MEMO/12/201, 21 March 2012. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-12-201\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-201_en.htm?locale=en).

<sup>208</sup> European Commission document IP/12/268, 21 March 2012. Viewed at: [http://europa.eu/rapid/press-release\\_IP-12-268\\_en.htm](http://europa.eu/rapid/press-release_IP-12-268_en.htm).

<sup>209</sup> European Commission document MEMO/12/201, "External public procurement initiative - Frequently Asked Questions", 21 March 2012. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-12-201\\_en.pdf](http://europa.eu/rapid/press-release_MEMO-12-201_en.pdf). For detail of the proposal text, see European Commission document COM(2012) 124 final, 21 March 2012. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/march/tradoc\\_149243.pdf](http://trade.ec.europa.eu/doclib/docs/2012/march/tradoc_149243.pdf).

and all procurement procedures) in the EU by mid-2016.<sup>210</sup> Furthermore, one of the priority actions included in the Single Market Act II presented by the Commission in October 2012, was to make electronic invoicing the standard invoicing mode for public procurement.<sup>211</sup>

### 3.3.4 Competition policy and regulatory issues

#### 3.3.4.1 Overview

3.225. The basic competition policy framework has remained unchanged since the previous Review. Articles 101-109 of the Treaty on the Functioning of the European Union (TFEU) provide the basic competition principles: Article 101 prohibits agreements between two or more independent market operators that restrict competition;<sup>212</sup> and Article 102 prohibits firms holding a dominant position from abusing that position. The main rules on procedures are found in Council Regulation (EC) 1/2003, which implements the rules laid down by Articles 101 and 102. Article 106 stipulates that undertakings must not obstruct competition and not be contrary to the interest of the EU. Council Regulation No. 139/2004 set out the rules on procedures for review of mergers and acquisitions.

3.226. Under Article 105 of the TFEU, the Commission may conduct investigations and take decisions either following receipt of a complaint or on its own initiative when it suspects there may have been a violation of the Treaty concerning competition policy. The Court of Justice reviews the Commission's activities and may rule against the Commission's decisions.<sup>213</sup>

3.227. The responsibility for public enforcement of competition policy across the EU is shared by the Commission and the national competition authorities of the member States. The Commission cooperates with member States' national competition authorities through the European Competition Network (ECN), established to enhance the efficiency of policy application within the system of shared jurisdiction. Within the ECN, the Commission and member States' competition authorities share information and attempt to agree on effective allocation of cases, which should be dealt with by a single competition authority as often as possible, either a member State's or the Commission. Where an agreement or practice substantially affects competition in more than one member State, the Network members seek to ensure that the case is assigned to the authority which is well placed to deal with it.<sup>214</sup> The Commission is particularly well placed if one or several agreement(s) or practice(s) have effects on competition in more than three member States.<sup>215</sup>

3.228. Appeals in competition matters can be brought before the General Court and the Court of Justice.<sup>216</sup> Subject to certain conditions, the parties can bring an action for annulment of Commission decisions before the General Court (on grounds of fact or law). Appeals on points of law only may be brought before the Court of Justice against judgements and orders of the General Court.

<sup>210</sup> European Commission Press Releases IP/11/1580, 20 December 2011. Viewed at: [http://europa.eu/rapid/press-release\\_IP-11-1580\\_en.htm](http://europa.eu/rapid/press-release_IP-11-1580_en.htm); and IP/12/389, 20 April 2012. Viewed at: [http://europa.eu/rapid/press-release\\_IP-12-389\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-389_en.htm?locale=en).

<sup>211</sup> European Commission document COM(2012) 573 final, 3 October 2012. Viewed at: [http://ec.europa.eu/internal\\_market/smact/docs/single-market-act2\\_en.pdf](http://ec.europa.eu/internal_market/smact/docs/single-market-act2_en.pdf). See also European Commission (document COM(2012) 179 final, 20 April 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0179:FIN:EN:PDF>.

<sup>212</sup> In particular, agreements that: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

<sup>213</sup> For example, case T-344/88, 22 May 2012.

<sup>214</sup> An authority can be considered to be well placed to deal with a case if the following three cumulative conditions are met: the agreement or practice has substantial direct actual or foreseeable effects on competition within its territory, is implemented within or originates from its territory; the authority is able to effectively bring to an end the entire infringement; it can gather, possibly with the assistance of other authorities, the evidence required to prove the infringement.

<sup>215</sup> Council of the European Union document 15435/02 ADD.1, "Joint Statement of the Council and the Commission on the Functioning of the Network of Competition Authorities", 10 December 2002. Viewed at: <http://register.consilium.europa.eu/pdf/en/02/st15/st15435-ad01.en02.pdf>.

<sup>216</sup> Article 263, TFEU.



### 3.3.4.2 Anti-trust

3.229. Article 101 of the TFEU prohibits agreements between undertakings that restrict competition, with the provision that this prohibition may be declared inapplicable for agreements that contribute to improving production or distribution of goods, or promote technical or economic progress while allowing consumers a fair share of the benefits. It does not apply to agreements of minor importance (*de minimis*) where the aggregate market share of the undertakings is small (less than 10% in cases of horizontal agreements, or 15% for vertical agreements).<sup>217</sup> The Commission has also published guidelines on the applicability of Article 101 on horizontal cooperation agreements between actual or potential competitors, such as agreements on product standardization or joint R&D.<sup>218</sup> Furthermore, through Commission Regulation (EC) No. 772/2004 of April 2004, certain kinds of licensing agreements for transfer of technology have been granted a block exemption through regulation whose current regime, set to expire in April 2014, is currently under review by the Commission.

3.230. In the context of the current economic downturn, a number of undertakings in various industries cited economic crises and the overcapacity problems as justifications for agreements that restrict competition, by, for example, jointly reducing output. The Commission pointed out that such crisis cartels, or industrial restructuring agreements, despite their seeming remedy to overcome the effects of crisis, cannot be justified by economic downturns. It further stressed that not only are they in principle a restriction of competition under Article 101(1), but also are unlikely to be exempted under Article 101(3).<sup>219</sup>

3.231. Since 2008, companies found to have participated in a cartel can settle their case by acknowledging their involvement in the cartel and having a reduced fine in return. Since the first settlement case in 2010, three out of four decisions made in 2011 resulted in settlements. The ECN published a revised version of its Model Leniency Programme that introduced a set of common standards for applications for leniency in order to address the issue of discrepancies among member States. For instance, under the refined Model Leniency Programme, all leniency applicants applying to the European Commission in cases concerning more than three member States will now be able to submit a summary application to national competition authorities, whereas in the past only the immunity applicant could do so. The Commission received 146 applications for immunity and 132 applications for a reduction of fines under the 2006 Notice, from the date of its introduction to the end of 2012.

3.232. The total number of new anti-trust cases (including cartels and antitrust non-cartel cases) rose from 95 in 2010 to 103 in 2011, and fell to 98 in 2012; 87 cases were closed in 2010, 95 in 2011, and 68 in 2012. In 2012 (as of 5 December) there were 5 cartel decisions imposing fines totalling €1.9 billion and involving 37 undertakings/associations by the Commission, compared with 4 decisions in 2011 with fines totalling €614 million, involving 14 undertakings.

3.233. Under Council Regulation (EC) No. 1/2003, when circumstances suggest that competition may be restricted or distorted in a certain sector, the Commission can conduct its inquiry into the particular sector and request information from the undertakings concerned. In the context of rising food prices, the Commission and national competition authorities began monitoring the food industry in order to find out the level of competition and competitive structure for the period 2004-2011. Among some 180 cases examined by the authorities in the period, more than 50 cartel cases were sanctions, and vertical restraints were found mainly in coffee, sugar and multi-product markets.<sup>220</sup> In 2011, the Commission concluded its investigation into the EU banana markets and imposed a fine of €8.9 million on two of the main importers and sellers of bananas in the EU for price fixing and exchanging price information in Italy, Greece and Portugal.<sup>221</sup>

<sup>217</sup> Commission Notice on agreements of minor importance, (2001/C 368/07), 22 December 2001. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:368:0013:0015:EN:PDF>.

<sup>218</sup> European Commission (2011), *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements*, 2011/C 11/01, 14 January. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:011:0001:0072:EN:PDF>.

<sup>219</sup> OECD document (2011c).

<sup>220</sup> European Commission (2012c).

<sup>221</sup> European Commission Press Release IP/11/1186, 12 October 2011. Viewed at: [http://europa.eu/rapid/press-release\\_IP-11-1186\\_en.htm](http://europa.eu/rapid/press-release_IP-11-1186_en.htm).

3.234. In July 2012, DG Competition published its third monitoring exercise on patent settlements in the pharmaceutical sector. This exercise focused on patent settlements concluded between originator and generic companies in 2011.<sup>222</sup> It showed that although the number of such agreements had not decreased, the percentage of settlements restricting generic entry had decreased: 70% of settlements did not involve a limitation on generic market entry in the period concerned, compared to 57% in 2008-2009. Following the sector inquiry, the Commission issued statements of objections against pharmaceutical companies in two major cases in July 2012, concerning citalopram (an antidepressant) and perindopril (a cardio-vascular medicine). The concern in both cases was that the originator companies (i.e. enjoying patent protection for their products) and the generic competitors entered into patent settlement agreements which may have hindered the entry of generic alternatives into markets in the EEA and maintained unnecessarily high prices.<sup>223</sup>

### 3.3.4.3 Mergers and acquisitions

3.235. Council Regulation No. 139/2004 requires examination of whether a concentration would significantly impede effective competition, notably through the creation or strengthening of a dominant position. In such cases, the concentration may be prohibited or conditionally approved. Therefore, all concentrations with a "Community dimension" are subject to review by the Commission before being approved. A merger with a "Community dimension" is defined as a merger where the parties have a combined worldwide turnover of €5 billion and each party has a Community-wide turnover of €250 million.<sup>224</sup> In accordance with the stand-still obligation, no merger may proceed unless approved by the Commission. Most mergers are approved within the initial (first phase) period, without the need for an in-depth (second phase) investigation. As for 2012, 263 out of 283 merger notifications were cleared in the first phase.

3.236. In 2011 there were 309 merger notifications to the Commission (up from 274 in 2010), of which 299 were approved in the first phase (5 of them conditionally), 5 were approved after a second-phase investigation, and 10 were withdrawn. The only prohibited concentration of that year, of two airlines, was the Commission's first prohibition since 2007. Despite the financial crises, M&A activity in the EU has been slowly recovering since 2010, although still below the peak of 402 notified mergers in 2007. In 2012, there were 283 notifications, of which 254 were approved in the first phase (9 were approved conditionally), 5 were approved after a second-phase investigation, and 4 were withdrawn. One merger was prohibited.

3.237. The proposed trans-Atlantic transaction between two stock exchanges, which the Commission blocked in 2012, was also being investigated by the US Department of Justice at the same time. The Commission cooperates with the US competition authorities (Department of Justice and Federal Trade Commission) primarily on the basis of the 1991 Cooperation Agreement and 1998 Positive Comity Agreement. Although different outcomes resulted from differences in the markets in the respective jurisdictions, during the parallel investigation it was noted that the open and regular dialogue between the European Commission and the US Department of Justice was very effective, allowing each agency to conduct its respective investigation and to understand developments and anticipate outcomes in the other jurisdiction.<sup>225</sup> The 2011 EU/US Best Practices

<sup>222</sup> The first two monitoring exercises were concluded in 2010 and 2011. The final report on the sector inquiry published in 2009 showed that originator companies used a variety of instruments to protect the commercial life of their products from generic entry, including patent clusters, patent litigations, and settlement agreements. Patent settlement agreements are commercial agreements to settle patent-related disputes. The Commission noted that some of the agreements could be potentially problematic from an EU competition law perspective, in particular those which may result in restricting, limiting or delaying generic entry in return for a value transfer (by means of monetary transfer, distribution agreements, granting a license, etc.), for instance, by the originator company to the generic company.

<sup>223</sup> European Commission Press Release IP/12/834, 25 July 2012. Viewed at: [http://europa.eu/rapid/press-release\\_IP-12-834\\_en.pdf](http://europa.eu/rapid/press-release_IP-12-834_en.pdf); and European Commission Press Release IP/12/835, 30 July 2012. Viewed at: [http://europa.eu/rapid/press-release\\_IP-12-835\\_en.pdf](http://europa.eu/rapid/press-release_IP-12-835_en.pdf).

<sup>224</sup> Mergers with a combined worldwide turnover of €2.5 billion are also examined by the Commission if: (i) the parties' combined turnover exceeds €100 million in at least three EU member States; (ii) each party has a turnover of €25 million in the same three EU member States; and (iii) the individual Community-wide turnover of each party exceeds €100 million. If these thresholds are not met, mergers may be subject to review under national laws of the member States. However, mergers that do not have EU dimensions can still be subject to the Commission's review, upon a member State's request, if they affect trade between member States and significantly affect competition in the territory of the involved member States.

<sup>225</sup> U.S. Department of Justice (2012).

on Cooperation in Merger Investigation revised the 2003 version, to better reflect current cooperation practices, particularly on remedies and on the timing of investigations, in order to set an advisory framework on inter-agency cooperation.<sup>226</sup>

3.238. Amid the increasing number of M&A activities in the EU involving firms from emerging economies, the Commission stressed the current merger control regime's equal treatment of foreign firms in relation to their investment in the EU and the importance of staying away from using merger control as a protectionist measure against foreign investment in the EU.<sup>227</sup> Notably, a number of mergers involving firms owned by the Chinese State were approved by the Commission, which stated that the same criteria that it adopts to assess mergers involving member-State-controlled firms were applied, irrespective of the nationality of the companies.<sup>228</sup>

#### 3.3.4.4 International cooperation

3.239. As companies increasingly engage in cross-border deals affecting several countries, the EU has cooperated with competition authorities outside its jurisdiction. The EU's competition agreements with the United States, Canada, Japan, and Korea enable the parties to share mainly non-confidential information.<sup>229</sup> The agreement with Switzerland that was concluded in 2012 goes beyond previous cooperation with other jurisdictions, due to the fact that the concluded agreement would allow a broader scope of information exchange, even without the consent of the companies involved.<sup>230</sup> At present, the EU has concluded bilateral agreements and/or memoranda of understanding with Brazil, China, and Russia.<sup>231</sup>

3.240. An advocate in promoting greater convergence, the EU has also been supportive of greater multilateral cooperation through the International Competition Network (ICN), the UNCTAD Intergovernmental Group of Experts on Competition Policy, and the OECD Competition Committee.<sup>232</sup> The EU considered that these multilateral fora provide an important platform to promote open competition and fight protectionism; this will enable competition authorities worldwide to respond to cases more efficiently through coordinated inspections across several jurisdictions.<sup>233</sup>

#### 3.3.5 Intellectual property rights

3.241. Since its previous Trade Policy Review in 2011, the EU has continued to review and develop its legislative framework for the protection and enforcement of intellectual property rights (IPRs) in response to a rapidly changing economic and technological environment. In particular, in its May 2011 "blueprint" for IPRs to boost creativity and innovation<sup>234</sup>, the European Commission

<sup>226</sup> The stated common objectives of the co-operation are: promoting fully-informed decision-making; minimizing the risk of divergent outcomes; enhancing the efficiency of investigations; reducing burdens on merging parties and third parties; and increasing the overall transparency of the merger review process (U.S. Department of Justice, 2012).

<sup>227</sup> European Union Press Release SPEECH/11/346, 18 May 2011. Viewed at: [http://europa.eu/rapid/press-release\\_SPEECH-11-561\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-11-561_en.htm).

<sup>228</sup> Case No COMP/M.6082 (China National Bluestar/Elkem), Case No COMP/M.6113 (DSM/Sinochem), Case No COMP/M.6151 (Petrochina/Ineos), and Case No COMP/M.6111 (Huaneng/Intergen).

<sup>229</sup> They contain various instruments of cooperation in the area of competition policy but exclude the exchange of evidence. Only with the waiver of companies providing the information there can be exchange of confidential information between agencies involved. For details, see European Commission document COM(2012) 245 final, 1 June 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0245:FIN:EN:PDF>.

<sup>230</sup> The Commission published in June 2012 its proposal (COM(2012) 245 final) on the conclusion of an agreement, which needs to be adopted by the EU Council and the EU Parliament and could be the object of a Swiss referendum (European Commission document COM(2012) 245 final, 1 June 2012). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0245:FIN:EN:PDF>.

<sup>231</sup> For detailed legislation provisions, see European Commission online information, "DG COM: Provisions on international relations in EU competition policy". Viewed at: <http://ec.europa.eu/competition/international/legislation/legislation.html>.

<sup>232</sup> European Commission online information. Viewed at: [http://ec.europa.eu/competition/international/overview/index\\_en.html](http://ec.europa.eu/competition/international/overview/index_en.html).

<sup>233</sup> European Union Press Release SPEECH/11/346, 18 May 2011. Viewed at: [http://europa.eu/rapid/press-release\\_SPEECH-11-346\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-11-346_en.htm?locale=en).

<sup>234</sup> European Commission documents COM(2011) 287 final, 24 May 2011. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf); and COM(2012)

recognized the need to adapt and modernize the existing body of IPR legislation in order to reduce its current fragmentation. The objective is to establish a coherent and holistic framework that contributes to enhanced economic growth, job creation and competitiveness in the EU's single market, while ensuring a high level of protection of IPRs, and taking into account cultural diversity. For this purpose, the Commission proposed a comprehensive strategy, which includes a series of actions in key areas. Among others, those are the introduction of a unitary patent and specialized patent court, the modernisation of the trademark system, the streamlining of copyright licensing and revenue distribution, and the strengthening of IPR enforcement both within the EU and at its borders. They will be discussed in detail in the relevant sections below. At the same time, the Commission recognized the need to opt for a balanced approach that provides the right incentives to promote creative and innovative activity and to preserve cultural diversity, and ensures the widest possible access to IPR-protected creations and innovations. To do so, it calls, among others, for the rigorous application of competition rules in order to prevent or correct the abuse of IPRs.

3.242. For the EU, as a knowledge-based economy, IPRs are generally considered the vital backbone of the EU's economy and a key driver for its growth, as they constitute a key element to ensure that creativity and innovation are rewarded.<sup>235</sup> For example, investment in R&D has been reported to amount to 1.9% of the EU's GDP, and is expected to reach 3% in 2020.<sup>236</sup> Similarly, the EU's cultural and creative industries account for 3.3% of its GDP (2006) and 3% of total employment (2008). In 2008, 6.7 million people worked in creative industries. Another interesting example are fashion and high-end industries which are highly dependant on cultural and creative input; they each account for 3% of the EU GDP and employ 6 million people, with the creation of an additional 1 million jobs expected in high-end industries by 2020.<sup>237</sup>

3.243. The importance of IPR protection in the EU is also reflected by the high number of applications and titles granted. For example, in the period 2011-12, the European Patent Office recorded a 5.7% increase in patent filings and a 5.8% increase in patent grants. In total numbers, applications went up from almost 244,000 to 258,000, with about two thirds of applications submitted by non-EU countries of origin, and the number of patents granted amounting to 65,700 in 2012, as compared to about 62,000 in 2011.<sup>238</sup> That said, the European Patent Office, like other developed-country IP offices, also saw an annual decrease in its share of worldwide patent filings by 0.8% in the period 2008-11 which went down from 7.6% to 6.7%.<sup>239</sup> In contrast, the Office for Harmonization in the Internal Market (OHIM) witnessed an annual growth of 6% in trademark applications during the same period, with the share of worldwide filings increasing from 4.6% to 4.9%. For example, according to statistics released by the OHIM, annual applications for Community trademarks went up from 105,900 in 2011 to 107,927 in 2012, and registrations increased from 93,834 to 95,641 during the same period.<sup>240</sup>

3.244. The IPR regime in the EU is governed both by EU legislation and legislation in member States. Article 118 of the Treaty on the Functioning of the European Union contains an IP-specific provision that calls for measures to be established "for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements". The EU has put in place an extensive body of intellectual property legislation. Table A3.5 provides an overview of the main legislative instruments, as well as their status of notification to the Council for TRIPS pursuant to Article 63.2 TRIPS. Member states' legislation implements and complements, where appropriate, EU legislation and commitments under international agreements. The EU is an observer to the World Intellectual Property Organization (WIPO), while its member States are WIPO member States.

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582 final, 10 October 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0582:FIN:EN:PDF>.

<sup>235</sup> European Commission document COM(2012) 582 final, 10 October 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0582:FIN:EN:PDF>.

<sup>236</sup> European Commission document SEC(2011) 482 final, 13 April 2011. Viewed at: [http://ec.europa.eu/internal\\_market/indprop/docs/patent/sec2011-482-final\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/patent/sec2011-482-final_en.pdf).

<sup>237</sup> European Commission document COM(2012) 537 final, 26 September 2012. Viewed at: <http://ec.europa.eu/culture/our-policy-development/documents/communication-sept2012.pdf>.

<sup>238</sup> See EPO Press Release, 17 January 2013. Viewed at: <http://www.epo.org/news-issues/news/2013/20130117.html>.

<sup>239</sup> WIPO (2012b).

<sup>240</sup> For OHIM statistics, see OHIM (2013).

### 3.3.5.1 Exhaustion

3.245. The EU has a regime of regional exhaustion, under which parallel imports from third countries are not allowed without authorization by the right holder, while parallel imports within the EU are permitted. The principle of regional exhaustion will also apply to European patents with unitary effect.<sup>241</sup>

### 3.3.5.2 Copyright and related rights

3.246. Copyright-dependent industries play an important role in the EU economy. For example, the sales revenue of book publishers in the EU/EEA amounted to about €23 billion in 2009, with more than 500,000 new titles being put on the market, and approximately 135,000 people being employed in this sector in the same year.<sup>242</sup> Europe's TV market grew by 12% between 2006 and 2010, reaching an annual turnover of €84.4 billion in 2010. Having produced 1,168 films in 2009 and employing over 1 million people, the EU is among the largest film producers worldwide.<sup>243</sup>

3.247. In its 2011 blueprint for IPRs<sup>244</sup>, the Commission listed the creation of a comprehensive framework for copyright in the digital marketplace as a key component for further advancing the Single Market in IPRs. In a similar vein, the conclusions of the European Council in June 2012 underlined the importance of modernising Europe's copyright regime and facilitating licensing, while ensuring a high level of protection of intellectual property rights and taking into account cultural diversity.<sup>245</sup>

3.248. To achieve this objective, the Commission has proposed a number of legislative and other actions. The development of online copyright licensing services figures among the key features. As a follow-up, the Commission has submitted a proposal for a Directive on "Collective Management of Copyright and Related Rights and Multi-Territorial Licensing of Rights in Musical Works for Online Uses in the Internal Market" in July 2012.<sup>246</sup> The main objectives of the proposed Directive are twofold: first, to enhance the transparency and governance of collecting societies to ensure, *inter alia*, that right holders can freely choose the collecting society and are remunerated more quickly; and second, to facilitate cross-border licensing of musical works for online use to allow their distribution across the EU while collecting the revenues due to the authors, thus benefiting authors, service providers and consumers. The economic relevance of establishing EU-wide minimum standards in this field is highlighted by the fact that more than 250 collecting societies collect about €6 billion in royalties every year and that about 80% of the total revenue collected by collecting societies stems from licensing of musical works. The reported target date for the adoption of the proposed Directive is March 2014.

3.249. In order to allow for the free movement of goods within the EU's internal market, legislative action with respect to private copying levies is under consideration. Although copyright holders have the exclusive right to authorize the reproduction of their works, EU legislation allows member States to limit this right by permitting private copying on condition that the right holders receive "fair compensation" (Article 5(2) of Directive 2001/29/EC<sup>247</sup>). The CJEU considered private copying levies to be a valid form of providing for fair compensation, while clarifying that the indiscriminate application of such levies to digital reproduction equipment, devices, and media purchased for purposes clearly unrelated to private copying (e.g. for professional use by professional users) is not compatible with Directive 2001/29/EC.<sup>248</sup> That said, approaches to a number of key issues under member States' national laws diverge and thus potentially affect the

<sup>241</sup> See Article 6 of Regulation (EU) No. 1257/2012 on Implementing Enhanced Co-operation in the Area of the Creation of Unitary Patent Protection (OJEU L 361/1, 31 December 2012).

<sup>242</sup> European Commission Press Release MEMO/11/619, 20 September 2011. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-11-619\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-11-619_en.htm?locale=en).

<sup>243</sup> European Commission Press Release MEMO/11/502, 13 July 2011. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-11-502\\_en.htm?locale=fr](http://europa.eu/rapid/press-release_MEMO-11-502_en.htm?locale=fr).

<sup>244</sup> European Commission documents COM(2011) 287 final, 24 May 2011. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf).

<sup>245</sup> European Council document EUCO 76/12, 29 June 2012. Viewed at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/131388.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131388.pdf).

<sup>246</sup> European Commission document COM(2012) 372 final, 11 July 2012. Viewed at: [http://eur-lex.europa.eu/Result.do?T1=V5&T2=2012&T3=372&RechType=RECH\\_naturel&Submit=Search](http://eur-lex.europa.eu/Result.do?T1=V5&T2=2012&T3=372&RechType=RECH_naturel&Submit=Search).

<sup>247</sup> OJEU L 167/16, 22 June 2001.

<sup>248</sup> Case C-467/08 (Padawan vs. SGAE).



free movement of goods within the Single Market.<sup>249</sup> Those include the methodology used to impose levies, the type of equipment subject to levies, the person or entity liable to pay the levy and the level of fees applied. For some time now, the Commission has facilitated discussions between the main stakeholders in order to identify solutions that could address those and other challenges. However, opposing interests in the hardware industry, which is seeking lower levies to be imposed on fewer devices, and right holders, who want higher levies to be imposed on a wider range of devices, have so far made any progress impossible.<sup>250</sup> As suggested in its 2011 blueprint for IPRs, the Commission appointed a high-level mediator in April 2012 to look into possible compromise solutions. In January 2013, he presented a set of recommendations for consideration by the Commission.<sup>251</sup> Those include clarifying that no additional remuneration in the form of private copying levies should be due for copies that are made by end users for private purposes only in the context of a service previously licensed and which do not cause any harm to the right holder.

3.250. As a contribution to the preservation and dissemination of the cultural heritage and to the development of Europe's knowledge-based economy, a number of initiatives have been taken by the EU, including the digitisation and online accessibility of "orphan works" (i.e. works protected by copyright for which the author cannot be located), as well as the setting up of collective licensing schemes for "out-of-commerce" works (i.e. works protected by copyright for which authors or publishers are known, but which are not available in traditional or new digital channels of trade). Given that orphan works represent a significant part of libraries' and cultural institutions' collections in the EU, the establishment of a harmonized framework was considered essential in order to advance large-scale digitisation projects. For this purpose, Directive 2012/28/EU of 25 October 2012 on Certain Permitted Uses of Orphan Works<sup>252</sup> provides for an exception to copyright, permitting cultural institutions to digitise orphan works in the printed and audiovisual sector, as well as phonograms and works embedded in other works or phonograms, and to make them available online to the public. Parallel work in the area of out-of-commerce works has resulted in the signature of a Memorandum of Understanding (MoU) in September 2011 between libraries, as well as publishers, authors and collecting societies.<sup>253</sup> It establishes certain key principles regarding the digitisation and making available of out-of-commerce books and journals to which the contracting parties have committed themselves. Conscious of the need to fully respect existing copyright, the MoU encourages voluntary licensing agreements between all relevant parties. As another complementary tool to enhance access to the EU's cultural heritage, a further MoU was signed in September 2010 to access books for the visually impaired.<sup>254</sup> It aims to enhance the publication of works in special formats and to increase cross-border trade of such works through a network of trusted intermediaries. The Commission works with signatories to implement the MoU in order to ensure that the network of trusted intermediaries is set up and becomes operational, and to establish an online catalogue of works available in accessible formats.

3.251. In order to ensure that both performers and producers of phonograms dispose of adequate revenues, Directive 2006/116/EC<sup>255</sup> which harmonizes the term of protection of copyright and certain related rights at EU level, was amended by Directive 2011/77/EU.<sup>256</sup> It extends the term of protection for fixations of performances and for phonograms which have been lawfully published or communicated to the public to 70 years after such publication or communication (Table A3.6). The initial Commission proposal that the term of protection be extended to 95 years has thus not been

<sup>249</sup> See WIPO (2012a).

<sup>250</sup> EurActiv online information, "EU asks mediator to untangle copying levies", 25 May 2011. Viewed at: <http://www.euractiv.com/infosociety/eu-asks-mediator-untangle-copyin-news-505104>. See also Society of Audiovisual Authors online information, "Declaration on Private Copying Remuneration of 21 September 2012, signed by trade associations representing right holders". Viewed at: <http://www.saa-authors.eu/fr/news/72/Declaration-on-Private-Copying-Remuneration->

<sup>251</sup> Vitorino (2013).

<sup>252</sup> OJEU L 299/5, 27 October 2012.

<sup>253</sup> European Commission Memorandum of Understanding on Key Principles on the Digitisation and Making Available of Out-of-Commerce Works. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/copyright-info/20110920-mou\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-info/20110920-mou_en.pdf).

<sup>254</sup> European Commission, EU Stakeholders Dialogue Memorandum of Understanding (MOU) on access to works by people with print disabilities". Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/copyright-info/2010/20100914\\_mou\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-info/2010/20100914_mou_en.pdf).

<sup>255</sup> OJEU L 372/12, 27 December 2006.

<sup>256</sup> OJEU L 265/1, 11 October 2011.

retained.<sup>257</sup> Directive 2011/77/EU also introduces a number of accompanying measures supportive of performers' interests. For example, a mandatory clause in contracts between performers and producers ensures that performers can recover their rights if the producer does not market the sound recording during the extended term of protection. In addition, performers are entitled to an annual supplementary remuneration during the extended period of protection, to be funded by part of the revenue that producers are required to set aside for this purpose.

3.252. According to the Commission, the extended term of protection would bring performers' protection closer to that given to authors (life plus 70 years) (Table A3.6) and would ensure additional revenues both for performers, who often do not dispose of regular salaries, and producers of phonograms who are exposed to a rapidly changing business environment, allowing them to invest in new talents.<sup>258</sup> In response to earlier criticism<sup>259</sup>, the Commission reaffirmed its view that the extended term of protection is not expected to negatively affect prices paid by consumers. While the recording industry welcomed the extension<sup>260</sup>, concerns were, however, also reiterated regarding the necessity of the adopted measures which would mainly benefit producers and imply high costs for the general public.<sup>261</sup> The continuing divergence of views is also confirmed by the fact that eight member States voted against the adoption of the Directive, and two others abstained.

3.253. Most of the measures in the copyright sector described so far do not deal with works in the audiovisual sector. As foreshadowed in its 2011 blueprint for IPRs, the Commission has also launched a consultation process in order to identify new approaches that would facilitate cross-border and EU-wide licensing. This is regarded as another major step towards the creation of a digital internal market that makes audiovisual content widely available online and equally benefits producers and consumers. In order to discuss whether and how the EU's legislative framework needs to be adapted with a view to achieving this objective, a number of key issues have been identified by the Commission, including: the difficulties faced by broadcasters to clear rights with respect to the transmission and retransmission of audiovisual works for online use and across multiple territories, and to clear rights regarding transactional Video-on-Demand services; and the need to ensure that adequate remuneration is paid to authors and performers for the online exploitation of their works/performances. These and other issues are the object of the consultation process launched by the Commission in its Green Paper of 13 July 2011 that seeks the views of stakeholders with respect to the main obstacles impeding the development of a digital single market for audiovisual works and to identify possible ways forward.<sup>262</sup> According to the Commission, a report on the results of the public consultation will be published in the course of 2013.

3.254. To complement the measures set out above which aim to review and adapt the EU's legislative framework in the field of copyright and related rights, the Commission, in its Communication on "Content in the Digital Single Market" of 18 December 2012<sup>263</sup>, has proposed to address a number of other, closely related issues by means of a structured stakeholder dialogue. Under what is referred to as "Licences for Europe", it suggests that (i) current restrictions to

<sup>257</sup> European Commission document COM(2008) 464 final, 16 July 2008. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0464:FIN:EN:PDF>.

<sup>258</sup> EU online information. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/term-protection/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/term-protection/index_en.htm).

<sup>259</sup> See, for example, Gowers (2006), as well as the references provided in European Commission document SEC(2008) 2287, 16 July 2008. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/term/ia\\_term\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/term/ia_term_en.pdf).

<sup>260</sup> See IFPI online information, "Recording industry welcomes EU decision on copyright term extension" 12 September 2011. Viewed at: [http://www.ifpi.org/content/section\\_news/20110912.html](http://www.ifpi.org/content/section_news/20110912.html).

<sup>261</sup> See, for example, *The Register*, "EU recording copyright extension 'will cost €1bn'", 20 September 2011. Viewed at: [http://www.theregister.co.uk/2011/09/20/kretschmer\\_consumers\\_lose\\_out\\_when\\_artists\\_get\\_copyright\\_extension/](http://www.theregister.co.uk/2011/09/20/kretschmer_consumers_lose_out_when_artists_get_copyright_extension/). Dudge Stanford has compiled views in his contribution to IP Watch online information, "EU Extends Copyright Protection from 50 to 70 years", 12 September 2011. Viewed at: <http://www.ip-watch.org/2011/09/12/eu-extends-copyright-protection-from-50-to-70-years/>.

<sup>262</sup> European Commission document COM(2011) 427 final, 13 July 2011. Viewed at: [http://ec.europa.eu/internal\\_market/consultations/docs/2011/audiovisual/green\\_paper\\_COM2011\\_427\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2011/audiovisual/green_paper_COM2011_427_en.pdf).

<sup>263</sup> European Commission document (COM)2012 789 final, 18 December 2012. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/copyright-info/121218\\_communication-online-content\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-info/121218_communication-online-content_en.pdf).



cross-border online access and portability of services be identified, (ii) questions of licensing of and access to user-generated content be examined, (iii) online availability of audiovisual works be improved, including out-of-distribution works and (iv) the application of standard licensing models to text and data mining for scientific purposes be examined.

3.255. In parallel with the initiatives set out before, the Commission is also reviewing the EU copyright framework in general. Based on market studies, impact assessment and legal drafting work, it intends to take a decision in 2014 regarding the appropriateness of moving towards a comprehensive codification of the copyright directives.<sup>264</sup> The on-going review process covers the following elements: territoriality in the Internal Market; harmonization, limitations and exceptions to copyright in the digital age; fragmentation of the EU copyright market; and how to improve the effectiveness and efficiency of enforcement while underpinning its legitimacy in the wider context of copyright reform.

3.256. As regards the legal protection of computer programmes provided for under Directive 91/250/EEC (replaced by the codified version in Directive 2009/24/EC)<sup>265</sup>, the CJEU issued an important preliminary ruling that clarifies the scope of copyright protection for computer software. In *SAS Institute v World Programming Ltd*<sup>266</sup>, it confirmed that the expression in any form of a computer programme, including the source code and the object code, as well as the preparatory design work capable of leading to the reproduction or the subsequent creation of such a programme fall within the Directive's scope of application. To support its interpretation, the CJEU also referred to Articles 9 and 10 of the TRIPS Agreement, as well as the Berne Convention and the WIPO Copyright Treaty. The CJEU excluded, however, the functionality of a computer programme, as well as the programming language and the format of data files used in such a programme from the scope of copyright protection available under Directive 91/250/EEC. This finding is based on the consideration that protecting the functionality as a form of expression would amount to allowing the monopolization of ideas which, in turn, could affect technological progress and industrial development.

### 3.3.5.3 Industrial property

#### 3.3.5.3.1 Patents

3.257. Currently, there are three different avenues for patent applications: a national procedure is provided by the competent authority of each member State; a centralized procedure is available at the European Patent Office (EPO) to grant a European patent (Table A3.6); and an international procedure is available under the Patent Cooperation Treaty (PCT) administered by the WIPO.<sup>267</sup>

3.258. The European patent system under the EPO is considered as incomplete, fragmented, and costly.<sup>268</sup> For a European patent to take effect in member States, the patent owner must request validation at national level. This involves translation, local representation, and administration requirements. A European patent validated for example in all 27 member States costs around €36,000, of which more than €23,000 is for translation. This is almost 20 times the cost of obtaining a patent in the United States (on average €1,850).<sup>269</sup> Because of the cost, most inventors seek patent protection in a limited number of member States. Low validation entails a fragmented system for patent protection in the EU, with negative effects on the commercial value of patented inventions.<sup>270</sup> Problems associated with the fragmentation of the system include high translation and publication costs, diverging rules regarding renewal fees (for example, cumulated

<sup>264</sup> See European Commission document COM (2011) 287 final, 24 May 2011. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf).

<sup>265</sup> OJEU L 122/42, 17 May 1991; and OJEU L 111/16, 5 May 2009.

<sup>266</sup> Case C-406/10, CJEU judgment of 2 May 2012. Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text&docid=122362&pageIndex=0&doclang=EN&mode=lst&dir&occ=first&part=1&cid=115060>.

<sup>267</sup> European Commission document SEC(2011) 482 final, 13 April 2011. Viewed at: [http://ec.europa.eu/internal\\_market/indprop/docs/patent/sec2011-482-final\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/patent/sec2011-482-final_en.pdf).

<sup>268</sup> Harhoff (2009).

<sup>269</sup> European Commission Press Release IP/11/470, "Commission proposes unitary patent protection to boost research and innovation", 13 April 2011. Viewed at: [http://europa.eu/rapid/press-release\\_IP-11-470\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-11-470_en.htm?locale=en).

<sup>270</sup> European Commission document SEC(2010)797, 30 June 2010. Viewed at: [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2010/sec\\_2010\\_0797\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/sec_2010_0797_en.pdf).

fees until the 20<sup>th</sup> year of protection range from €2,400 in Malta to €13,170 in Germany) and complex national provisions with respect to registration of transfers and licences. In addition, in legal disputes, innovators are exposed to high costs and legal uncertainty as they may have to litigate in several countries in parallel to enforce their rights, taking the risk of diverging court decisions.

3.259. The need to address those shortcomings and to establish a coherent system of patent protection in the internal market that stimulates innovation, growth and competitiveness had been recognized for a long time.<sup>271</sup> The Commission first proposed the creation of a unitary EU patent in 2000. Yet, despite the Council's Common Political Approach of 2003, the negotiation process came to a halt. It was criticised by stakeholders mainly on two grounds: the inadequate jurisdictional arrangements and an unsatisfactory language regime. In 2007, discussions on a unitary patent protection were relaunched. Since no agreement could be reached on translation arrangements, the Commission, in 2010, responded favourably to the request of 25 member States and proposed to launch enhanced cooperation for the creation of unitary patent protection.<sup>272</sup> Following the consent by the European Parliament<sup>273</sup>, the Council authorized enhanced cooperation.<sup>274</sup> On this basis, in April 2011, the Commission proposed two Regulations implementing enhanced cooperation to adopt the legal basis for a European patent with unitary effect (unitary patent) and to establish the applicable translation arrangements.<sup>275</sup> Next to those Regulations, the third element of the "unitary patent package" is the (draft) Agreement on the Unified Patent Court, an international agreement open for signature by all EU member States<sup>276</sup> (but outside the EU institutional framework and without EU participation) which aims at setting up a unified patent litigation system.

3.260. The European Parliament and the Council reached a political agreement on the unitary patent package in December 2012. Regulation (EU) No. 1257/2012 of 17 December 2012 "Implementing Enhanced Co-operation in the Area of the Creation of Unitary Patent Protection"<sup>277</sup> and Council Regulation (EU) No. 1260/2012 of 17 December 2012 "Implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements"<sup>278</sup> were adopted and will apply from 1 January 2014 or, should this be later, the date of entry into force of the Agreement. At a diplomatic conference in February 2013, 24 EU member States signed the Agreement.<sup>279</sup> Acceptance by 13 member States, including the three member States with the highest number of European patents in force (Germany, France and the United Kingdom) is now required for the Agreement to enter into force.<sup>280</sup>

3.261. The European patent with unitary effect will provide uniform protection and will be automatically valid in the participating member States. Validation in individual member States (and thus costly translation requirements) will no longer be necessary. The European patent with unitary effect may only be limited, transferred or revoked, or lapse in respect of all those member

<sup>271</sup> For a description of the procedures leading to the adoption of the unitary patent, see European Council (2012).

<sup>272</sup> European Commission document COM(2010) 790 final, 14 December 2010. Viewed at: [http://ec.europa.eu/internal\\_market/indprop/docs/patent/COM\(2010\)790-final\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/patent/COM(2010)790-final_en.pdf). The framework of enhanced cooperation allows a group of member States to go ahead with legislation in a given area, while others may join at any time in the future (see Article 329 TFEU).

<sup>273</sup> European Parliament Legislative Resolution of 15 February 2011 on the draft Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection, P7\_TA(2011)0054. Viewed at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0054+0+DOC+XML+V0//EN>.

<sup>274</sup> Council Decision 2011/167/EU, 10 March 2011 (OJEU L 76/53, 22 March 2011). Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:076:0053:0055:en:PDF>.

<sup>275</sup> European Commission documents COM(2011) 215 final, 13 April 2011. Viewed at: [http://ec.europa.eu/internal\\_market/indprop/docs/patent/com2011-215-final\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/patent/com2011-215-final_en.pdf); and COM(2011) 216 final, 13 April 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0216:FIN:en:PDF>.

<sup>276</sup> Taking into account an earlier CJEU Opinion, the participation of third countries is excluded (CJEU Opinion 1/09, 8 March 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CV0001:EN:HTML>).

<sup>277</sup> OJEU L361/1, 31 December 2012.

<sup>278</sup> OJEU L361/89, 31 December 2012.

<sup>279</sup> The text of the Agreement on a Unified Patent Court can be viewed at Council of the European Union online information. Viewed at: <http://register.consilium.europa.eu/pdf/en/12/st16/st16351.en12.pdf>.

<sup>280</sup> The status of signature and acceptance of the Agreement can be viewed at European Commission online information. Viewed at: [http://ec.europa.eu/internal\\_market/indprop/patent/ratification/index\\_en.htm](http://ec.europa.eu/internal_market/indprop/patent/ratification/index_en.htm).

States. As regards the rights conferred, Article 5 of Regulation (EU) No. 1257/2012 stipulates that the patent provides protection against certain acts by third parties and that the definition of those acts is left to the national law of the participating member States. The scope of the rights under the unitary patent, as well as the applicable exceptions and limitations will nevertheless be uniform since national laws are due to be harmonized through the Agreement: the latter incorporates the provisions on rights and exceptions/limitations from the initial Commission proposal (see Articles 6 to 8 of the proposed Regulation<sup>281</sup>); they have been transferred from the Regulation to the Agreement (see Articles 25 to 27). This was in response to the view expressed by some member States that the CJEU should not interpret substantive patent law (as including those provisions in the Regulation would have implied conferring jurisdiction to the CJEU). In order to obtain a European patent with unitary effect, the right holder will have to request, no later than one month after the grant of the European patent by the EPO, the "unitary effect" at the EPO. Otherwise, the patent will remain a "classical" European patent (which needs to be validated in individual member States). The estimated cost for the grant of a European patent with unitary patent will, after the transition period, amount to approximately €5,000 and is thus much lower than the costs currently occurring for the grant of a European patent.

3.262. The translation arrangements for European patents with unitary effect are based on the EPO's linguistic regime, under which a patent is granted in English, French or German; the claims are translated into the other two languages. Applicants can, however, file patent applications in any official EU language. The translation arrangements will also provide for the reimbursement of translation costs. Unlike today, further costly translations would thus not be required. The translation arrangements are expected to lead to a considerable reduction of costs and benefit the users of the system, in particular SMEs. In addition, machine translation will be available for information purposes in all official EU languages.

3.263. The Unified Patent Court will have exclusive jurisdiction in infringement and revocation proceedings, both for "classical" European patents and European patents with unitary effect. This will ensure legal certainty through the uniform application of patent law. Multiple court cases on the same patent will thus be avoided and uniform jurisdiction guaranteed. Following the agreement reached by participating member States on outstanding issues on 28 June 2012<sup>282</sup>, the location of the Central Division of the Court of First Instance of the Unified Patent Court will be Paris, with Munich and London hosting specialist sections. The Court of Appeal will be located in Luxemburg.

3.264. Both Spain and Italy have decided not to participate in the enhanced cooperation for the creation of unitary patent protection. In parallel, they have asked the CJEU to annul the above Council Decision authorising enhanced cooperation.<sup>283</sup> In his opinion of 11 December 2012, the Advocate General dismissed the claims by Spain and Italy<sup>284</sup>, but the CJEU decision is still pending at the time of writing. That said, Italy has signed the Unified Patent Court Agreement.

3.265. The forthcoming introduction of the European patent with unitary effect has been generally welcomed by business as a useful means to ease access to patent protection, in particular for small and medium-sized enterprises. However, concerns have also been voiced, for example as regards possible forum shopping and the yet-to-be-determined court costs. In any event, a number of outstanding issues still need to be settled, including the infrastructure of the patent registry and the courts. The Rules of Procedure of the Unified Patent Court will be finalized by a Preparatory Committee in 2013.

3.266. Issues related to the patenting of biotechnological inventions are often sensitive and complex. A good illustration is the question of patentability of inventions which involve work on human embryonic stem cells where the cultural and religious differences in EU member States would prohibit some from research into and use of such stem cells, whereas others are taking a more permissive approach. Against this background, the CJEU was asked to interpret the

<sup>281</sup> See European Commission document COM(2011) 215 final, 13 April 2011. Viewed at: [http://eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=215&RechType=RECH\\_naturel&Submit=Search](http://eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=215&RechType=RECH_naturel&Submit=Search).

<sup>282</sup> EPO Press Release, 29 June 2012. Viewed at: <http://www.epo.org/news-issues/news/2012/20120629.html>.

<sup>283</sup> Joined cases C-274-11 and C-295-11 (Kingdom of Spain/Italian Republic v. Council of the European Union).

<sup>284</sup> Opinion of Advocate General Bot, delivered on 11 December 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CC0274:EN:HTML>.

Biotechnology Directive 98/44/EC.<sup>285</sup> In *Oliver Brüstle v Greenpeace e.V.*, it ruled that a process in which a human embryo is used for purposes of scientific research and which leads to its destruction is, in principle, not patentable, thus prohibiting the patenting of a wide range of inventions based on human embryonic stem cells.<sup>286</sup> Under Directive 98/44/EC, the Commission was also requested to report annually on the development and implications of patent law in biotechnology and genetic engineering. Two such reports were issued in the past and a third is impending. Given the complexity of issues related to the interface between biotechnological inventions and IP law, the Commission decided to set up an expert group, composed of IP law practitioners and scientists, that will assist the Commission in its reporting requirements.<sup>287</sup> Ethical issues will, however, continue to be dealt with by the European Group on Ethics in Science and New Technologies.

3.267. Recognizing the risks of patent thickets (i.e. a "dense web of overlapping IPRs that a company must hack its way through in order to actually commercialize new technology"<sup>288</sup>) and patent ambushes (i.e. where a participant in a standard-setting structure withholds disclosure of his/her patent or patent applications until a standard is set and subsequently refuses to grant a licence for the patented technology included in the standard on fair, reasonable and non-discriminatory terms), in particular in high technology areas, the Commission suggested that the regulatory system be reviewed in order to foster pro-competitive licensing and patent pool arrangements, as well as technology transfer. For this purpose, it has announced its intention to consider measures to increase transparency and improve the treatment of IPRs in standardization procedures and to foster cooperation between patent offices and standard-setting organizations.<sup>289</sup>

### 3.3.5.3.2 Supplementary protection certificates

3.268. Although closely related to, and conferring the same rights as the basic patent, supplementary protection certificates (SPCs) have been described by the Commission as a *sui generis* IP category that only applies after expiry of the basic patent.<sup>290</sup> Making SPCs available aims to restore effective patent protection for certain regulated products; they are designed to compensate the right holder for the time it takes from the filing of a patent application to the marketing authorization, and the potentially negative impact resulting from the reduction of the effective period of market exclusivity to recover R&D investment. SPCs are available for medicinal products (Regulation (EC) No. 469/2009<sup>291</sup>) and plant-protection products (Regulation (EC) No. 1610/96<sup>292</sup>). Both regulations are motivated by the desire to incentivize further research into medicinal and plant protection products and to ensure that those products are developed in the EU. For this purpose, SPCs confer an additional period of market exclusivity of no more than five years to the right holder, provided that an overall maximum of 15 years of exclusivity on the market from the time of first marketing of the product concerned is not exceeded. Protection under an SPC is strictly confined to the product which obtained marketing authorization as a medicinal product in the first place. Article 36 of Regulation (EC) No. 1901/2006 provides for an additional six-month extension for compliance with new pediatric-related requirements.<sup>293</sup>

### 3.3.5.3.3 Plant varieties

3.269. In the EU, breeders can seek protection of plant varieties either as a Community plant variety right under a *sui generis* system, established by Council Regulation (EC) No. 2100/94<sup>294</sup>, or

<sup>285</sup> OJEU L 213/13, 30 July 1998.

<sup>286</sup> Case C-34/10, CJEU judgement of 18 October 2011. Viewed at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=111402&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2135020>.

<sup>287</sup> Commission Decision C(2012) 7686 final, 7 November 2012. Viewed at:

[http://ec.europa.eu/internal\\_market/indprop/docs/invent/dec\\_121107\\_biotechninventexpertgroup\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/invent/dec_121107_biotechninventexpertgroup_en.pdf).

<sup>288</sup> Shapiro (2001).

<sup>289</sup> European Commission document COM(2012) 582 final, 10 October 2012. Viewed at: [http://eur-lex.europa.eu/Result.do?T1=V5&T2=2012&T3=582&RechType=RECH\\_naturel&Submit=Search](http://eur-lex.europa.eu/Result.do?T1=V5&T2=2012&T3=582&RechType=RECH_naturel&Submit=Search).

<sup>290</sup> See, for example, European Commission document COM(94) 579 final, "Proposal for a Regulation concerning the creation of a supplementary protection certificate for plant protection products", 9 December 1994. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1994:0579:FIN:EN:PDF>.

<sup>291</sup> OJEU L 152/1, 16 June 2009.

<sup>292</sup> OJEU L 198/30, 8 August 1996.

<sup>293</sup> OJEU L 378/1, 27 December 2006.

<sup>294</sup> OJEU L 227/1, 1 September 1994.

under national systems in 23 member States.<sup>295</sup> Regulation (EC) No. 2100/94 sets out rules for the application, examination and grant of new plant variety rights that become effective in all EU member States through a single application process. The EU-wide system is administered by the Community Plant Variety Office (CPVO). It grants Community plant variety rights to breeders which are similar to patent rights, i.e. they entitle the right holder to prevent unauthorized third parties from undertaking certain acts based on a single title that is valid throughout the EU. In order to stimulate plant breeding, a breeder's exemption permits free access to protected varieties in order to stimulate the development and exploitation of new varieties. The exercise of Community plant variety rights is also subject to certain exceptions and limitations motivated by public interest, including where they are necessary to preserve agricultural production or to supply the market. The general term of protection for all botanical genera and species is 25 years; in the case of varieties of vine and tree species, it extends to 30 years (Table A3.6).

3.270. As of 2013, the CPVO applies the following fees: €650 for an application, €1,160 to €2,500 for a technical examination, €240 for taking over reports, as well as an annual fee of €300. The fee for an appeal is to €1,500. From 1995 to 2011, a total of more than 41,000 applications were received by the Community Plant Variety Office, of which almost 60% were in the ornamental sector. By 2012, more than 44,000 applications had been received and more than 20,000 titles were in force. A report evaluating the Community Plant Variety Acquis, released in April 2011<sup>296</sup>, concluded that the system had achieved its initial objectives since it provided a uniform, harmonized and balanced system of protection at EU level. That said, a number of areas were identified in which the system could be further clarified and improved. Those include its interaction with plant-related patents under the Biotechnology Directive 98/44/EC, among others, because a breeder's exemption is unknown to the latter, and the potential tensions between the system and Enforcement Directive 2004/48/EC regarding infringement procedures.

#### 3.3.5.3.4 Trademarks

3.271. In the EU, trademarks can be registered either as a Community trademark<sup>297</sup> (Table A3.6), or under national trademark systems. The main substantive provisions of the latter are harmonized by means of Directive 2008/95/EC<sup>298</sup> (the Trademark Directive) and interpreted by the CJEU<sup>299</sup>, thus ensuring that an equivalent level of protection applies throughout all member States. The two regimes coexist and have different coverage and application requirements.

3.272. A link between the two systems is established through the concept of seniority, i.e. the possibility of claiming, in applying for the Community trademark, the seniority of the earlier trademark in the member State in or for which it was registered, preserving prior rights, even if the earlier trademark is not renewed. Another link is the concept of conversion, i.e. the possibility of converting a Community trademark application that was refused, or declared invalid or revoked, into a national trademark application in all member States in which the ground for refusal does not apply. The ensuing national trademark applications will retain the filing date of the Community trademark application.

3.273. Businesses can register a trademark in each of the 27 EU member States, and at the same time a Community trademark. Opposition to a national trademark application can be filed based on a prior Community trademark. Registering a Community trademark may thus prevent a specific mark from being registered as a national trademark by a third party. If, on the other hand, a company chooses to register a trademark at national level and not as a Community trademark, the same sign could be registered by another company in another member State. Trademark infringement is dealt with by specialized national courts of first and second instance, or "Community trademark courts", based on Regulation (EC) No. 207/2009.

3.274. The Community trademark is valid throughout the EU, and is registered and administered by the OHIM (Table A3.6). The time needed to process applications for a Community trademark

<sup>295</sup> Cyprus, Greece, Luxemburg, and Malta do not have a national plant variety protection regime.

<sup>296</sup> GHK Consulting and ADAS UK (2011).

<sup>297</sup> Established by Council Regulation (EC) No. 207/2009 of 26 February 2009 (OJ L78/1, 24 March 2009).

<sup>298</sup> OJ L299/25, 8 November 2009.

<sup>299</sup> According to some views expressed in literature, the CJEU jurisprudence has significantly relaxed the requirements to be met in order to enjoy trademark protection. See, for example, Senftleben (2011).



has been considerably reduced in recent years. In 2012, it took less than 25 weeks from reception of the application to registration in 99% of the cases.<sup>300</sup> Since 2009, OHIM fees for the registration of an individual trademark of up to three classes of goods and services amount to €1,050, or €900 if the application is filed electronically. Renewal fees are €1,500 and €1,350, respectively. The basic fee for a collective mark is €1,800. The opposition fee is €350.<sup>301</sup>

3.275. In 2011, a comprehensive report was released that evaluated the overall functioning of the trademark system in the EU.<sup>302</sup> It concluded that the basic features of the European trademark system, including the principle of coexistence between the Community trademark system and national systems, function well in practice. However, in order to further improve the functioning of the internal market, the process of harmonizing national trademark law should be continued by making the optional provisions of the Trademark Directive mandatory and by extending its scope to other areas of substantive law.

3.276. Taking into account the findings of the study and the feedback received from stakeholders, the Commission has announced its intention to submit proposals designed to review the Community Trademark Regulation and the Trademark Directive.<sup>303</sup> These proposals have been adopted by the Commission in March 2013.<sup>304</sup> The objective is to modernize and adapt the trademark system both at the EU and national levels to make it more efficient, effective and consistent as a whole.

### 3.3.5.3.5 Geographical indications

3.277. According to the Commission, trade in products carrying a protected geographical indication (GI) is of significant economic relevance to the EU. For example, an estimated 25%-30% of the EU's trade in processed agricultural products is covered by GIs, as well as 80% of total wine exports and nearly all spirits exports.<sup>305</sup> As regards bilateral relationships, GI protection is particularly relevant for the EU's trade: for example, in 2010, the total value of products protected by GIs and exported from the EU to the United States amounted to €3.4 billion, to both Switzerland and Singapore €800 million, and to Canada €700 million. As regards the EU's trade with China, exports of GI-protected products were more than €650 million in 2010, reflecting a 400% increase in exports of wines and spirits to China between 2005 and 2010.

3.278. In the EU, there are three approaches for protecting geographical indications: as protected designations of origin (PDOs) or protected geographical indications (PGIs) for wine, spirits, and agricultural and foodstuff products (Table A3.6); as collective Community trademarks (Table A3.6); and through national appellation systems in EU member States.

3.279. At EU level, the key provisions for the protection of GIs in the form of PDOs or PGIs are laid down for wine in Regulation (EC) No. 1234/2007, as amended by Council Regulation (EC) 491/2009, for spirits in Regulation (EC) No. 110/2008, and for agricultural products and foodstuffs in Regulation (EU) No. 1151/2012<sup>306</sup>, which establishes a unified framework for several quality schemes (PDOs and PGIs, traditional specialities guaranteed, and optional quality terms) by covering them in a single legal instrument. Its stated objectives include the creation of a more robust framework for the protection and promotion of quality agricultural products, the introduction of more coherent and clearer quality schemes and a shortening of the application process. The Regulation also attributes a more important role to producer groups.

3.280. Applications for registration of GIs of products originating in a geographic area in the EU are sent to the relevant member State which scrutinizes the application and initiates a national opposition procedure. If the member State considers that the application meets the requirements

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<sup>300</sup> See the statistical data provided by OHIM at OHMI online information. Viewed at: [http://oami.europa.eu/ows/rw/resource/documents/QPLUS/serviceCharter/2012/timelinessservicestandards\\_2012\\_en.pdf](http://oami.europa.eu/ows/rw/resource/documents/QPLUS/serviceCharter/2012/timelinessservicestandards_2012_en.pdf).

<sup>301</sup> See list of fees at OHIM online information. Viewed at: <http://oami.europa.eu/ows/rw/pages/CTM/feesPayment/listFees.en.do>.

<sup>302</sup> Max Planck Institute for Intellectual Property and Competition Law (2011).

<sup>303</sup> See European Commission document COM(2011) 287 final, 24 May 2011. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf).

<sup>304</sup> European Commission documents COM(2013) 161 final and COM(2013) 162 final, 27 March 2013.

<sup>305</sup> See DG Agriculture and Rural Development (2012b).

<sup>306</sup> OJEU L 343/1, 14 December 2012.

for registration at EU level and no valid opposition has been received, it may take a favourable decision and transmit the application to the European Commission. Member States may charge a fee to cover their costs. The Commission scrutinizes applications in order to check that they are justified and meet the conditions of the respective scheme.

3.281. If the Commission is satisfied with an application, it publishes the single document and reference to the product specification in the *Official Journal*. Within two (wine), three (agricultural products and foodstuffs) or six (spirits) months from the date of publication, a notice of opposition may be lodged. If no objections are raised within the deadline, the product is registered. In case of an opposition, a reasoned statement must be submitted, followed by a consultation process.

3.282. The registration system for and protection of GIs is also available for products from third countries. For GIs of products of non-EU origin, the application may be sent either directly, or through the authorities of the country where the geographical area is located, to the Commission. No fees are required for applications from third countries.<sup>307</sup>

3.283. The average registration time for European and foreign GIs, including scrutiny, opposition procedures and procedures for the adoption of the final decision, was around three years under the previous legislative framework. It is expected to become shorter with the implementation of the new time limits for scrutiny and opposition procedures under Regulation (EU) No. 1151/2012.

3.284. According to the Database of Origin and Registration (DOOR) for agricultural products and foodstuffs administered by the Commission, there are 14 third-country names among the 1,104 GIs registered in the EU (558 PDOs, 546 PGIs), including Café de Colombia and Darjeeling<sup>308</sup>; 12 of which have been registered since 2011. DOOR is a transparency tool, but has no legal status. Registration with legal authority for PDOs and PGIs for agricultural products and foodstuffs is provided for by the Register of protected designations of origin and protected geographical indications (Article 11 of Regulation (EU) No. 1151/2012).

3.285. The wine register "E-Bacchus" is a database which includes the Register of designations of origin and geographical indications protected in the EU under Regulation (EC) No. 1234/2007. It contains 1,310 PDOs and 570 PGIs for EU wine,<sup>309</sup> as well as two PDOs for third-country wine, i.e. Vale dos Vinhedos (Brazil) and Napa Valley (United States)). It also lists more than 1,100 third country geographical indications and names of origin protected in the EU in accordance with bilateral agreements on trade in wine that the EU has concluded with a number of trading partners. The register for spirits GIs consists of Annex III of Regulation (EC) No. 110/2008. "E-spirit-Drinks", a database on GIs protected in the EU for spirits originating in member States and third countries, lists 334 names for spirits. Two third-country names (Ron de Guatemala (Guatemala), and Pisco (Peru)) are currently being processed for registration.<sup>310</sup> An application for Tequila (Mexico) was received in January 2013.

3.286. Given the significant importance of GIs for the EU's external trade, the Commission has requested that the inclusion of a satisfactory chapter on GI protection becomes a prerequisite for the conclusion of any new generation FTA.<sup>311</sup> That said, a large number of EU and third-country GIs are already protected in third countries and in the EU through bilateral agreements that the EU has signed with its trading partners.<sup>312</sup> Recent examples include the Agreement on the Protection

<sup>307</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009.

<sup>308</sup> DOOR online information. Viewed at:

<http://ec.europa.eu/agriculture/quality/door/list.html;jsessionid=pL0hLqgLXhNmFOyFl1b24mY3t9dJQPflg3xbL2YphGT4k6zdWn34!-370879141> [February 2013].

<sup>309</sup> E-Bacchus database. Viewed at: <http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=pwelcome&language=EN> [January 2013].

<sup>310</sup> European Commission online information. Viewed at: <http://ec.europa.eu/agriculture/spirits/> [January 2013].

<sup>311</sup> DG Agriculture and Rural Development (2012b).

<sup>312</sup> These include agreements with Albania (wine and spirits, 2006); Australia (wine, signed in 2008 and entered into force in 2010); Bosnia and Herzegovina (wine, spirits and foodstuffs, 2008); Canada (wine and spirits, signed in 2003 and entered into force in June 2004); Chile (wine and spirits, 2002); Croatia (wine and spirits, 2001); former Yugoslav Republic of Macedonia (wine and spirits, 2001), Georgia (agricultural products and foodstuffs, signed in 2011 and entered into force in April 2012); Mexico (spirits, 1997); Moldova (agricultural products and foodstuffs, signed in 2012, entry into force pending); Montenegro (wine, spirits, and foodstuffs, 2008), Republic of Korea (wines, spirits, foodstuffs, signed in October 2010 and entered into force



of Designations of Origin and Geographical Indications for Agricultural Products and Foodstuffs<sup>313</sup> between the EU and Switzerland, which entered into force in December 2012. It establishes a detailed framework for the promotion and protection of GIs and accords protection to a large number of existing GIs (800 from the EU and 22 from Switzerland) listed in Appendix 1 to the Agreement; GIs for wine and spirits have been protected by both Parties since 2002 under the bilateral Agricultural Agreement. The EU and China have also made progress bilaterally in ensuring the protection of GIs. Under the "ten-plus-ten project", initiated in 2007 and completed in 2012, both sides agreed to the protection of ten EU GIs for agricultural products and foodstuffs on the Chinese market, as well as the registration of ten Chinese GIs by the EU.<sup>314</sup> In addition, under the EU-China Project on the Protection of IPRs (IPR2, 2007-11) and its successor programme "IP - A Key to Sustainable Competitiveness" (2013-15), analytical work with respect to the legal framework for the protection of GIs in China is supported. The EU and China have also launched negotiations on a bilateral agreement on GIs. Furthermore, a number of cooperation activities are being considered or carried out with other developing countries, for example, ECAP III with ASEAN countries. Under the EPA concluded with CARIFORUM, the establishment of a protection system for GIs by 2014 is supported by the EU. Similarly, in ongoing EPA negotiations with other trading partners, the EU has proposed its assistance to develop a GI system. In a similar vein, the Commission's Directorate General for Agriculture and Rural Development signed a Memorandum of Understanding with the African Regional Intellectual Property Organization on 26 November 2012.<sup>315</sup> It aims to enhance cooperation with a view to supporting the development of GIs.

3.287. Under the Community Trademark Regulation, GIs can be protected as Community collective trademarks.<sup>316</sup> Marks that identify the geographic origin of a product may be registered, as long as they have not become generic in the trade concerned. A collective trademark may be applied for by associations of manufacturers, producers, suppliers of services, or traders, and may be used only by members of such associations. However, this does not prevent the right of operators in the territory in which a corresponding GI originates to use the GI in accordance with the respective specification. Collective trademarks do not serve to identify the quality of a product.

3.288. GIs may also be protected and enforced through labelling rules, unfair competition law, customs law, trading standards, and other IPR systems applied in the EU and at national level in the member States. In 14 member States there are specific GI systems covering products that the EU system does not cover (such as handicrafts), and agricultural-product GIs that are pending registration in the EU register. For the latter, member States may provide transitional protection within their national territory. For wines and spirits, such transitional protection is not available. Once the agricultural-product GI is registered at EU level, the EU system provides legal protection for the name in the territory of the 27 member States. The EU has taken steps to increase the visibility of the EU scheme by requiring the EU PDO/PGI symbols for agricultural products to appear on the labelling as from January 2016.<sup>317</sup> These labelling provisions are optional for third-country GIs registered in the EU. Moreover, an optional PDO/PGI logo exists for wines. There is no logo for spirits.

3.289. Recognizing the fragmentation of the legal framework for the protection of non-agricultural GIs and the potentially negative impact on the functioning of the internal market, the Commission, following the announcement in its 2011 blueprint for IPRs, has entrusted a group of consultants to prepare a study that analyses the current legal framework, stakeholders' needs and the economic

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in July 2011); Serbia (wine, spirits, and foodstuffs: Interim Agreement on Trade and Trade Related Matters in force since 2010); and South Africa (wine and spirits, 2002); Switzerland (wines, spirits, and agricultural products, 2002). Although not specifically labelled as GI protection, the wine agreement concluded with the United States in 2006 establishes that names of origin are to be protected on a reciprocal basis.

<sup>313</sup> The text of the agreement has been published in OJEU L 297/3, 16 November 2011.

<sup>314</sup> European Commission Press Release IP/12/1297, 30 November 2012. Viewed at: [http://europa.eu/rapid/press-release\\_IP-12-1297\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1297_en.htm).

<sup>315</sup> European Commission Administrative Memorandum of Understanding on co-operation between the African Regional Intellectual Property Organization and the Directorate General for Agriculture and Rural Development of the European Commission. Viewed at: [http://ec.europa.eu/agriculture/developing-countries/gi/memorandum-aripo/text\\_en.pdf](http://ec.europa.eu/agriculture/developing-countries/gi/memorandum-aripo/text_en.pdf).

<sup>316</sup> WTO document WT/TPR/M/214/Add.1, p. 142, 2 July 2009.

<sup>317</sup> Articles 12(3) and 59 of Regulation (EU) No 1151/2012.

impact of regulating the protection at EU level.<sup>318</sup> The report was submitted to the Commission in December 2012. Based on stakeholder consultations and an impact assessment to be prepared in 2013, the Commission will decide on the appropriate follow-up.

### 3.3.5.3.6 Industrial designs

3.290. Since 2003, industrial designs can be registered in the EU as a Community design at the OHIM (Table A3.6) under Council Regulation (EC) No. 6/2002 of 12 December 2001<sup>319</sup>. A Registered Community Design (RCD) is protected throughout the EU. Registration fees amount to €350; renewal fees range from €90 (first time) to €180 (fourth time). By end 2012, about 700,000 RCDs have been registered by OHIM, and about 75,000 new designs are applied for each year. Next to registered designs, Regulation (EC) No. 6/2002 also provides for protection of unregistered Community designs for a period of three years from the date of making the design available to the public in the EU.

3.291. Following the accession of the EC to the Geneva Act of the Hague Agreement concerning international registration of industrial designs, the EC can be designated under the Hague System since 2008. Consequently, in the absence of a notification of refusal by OHIM within six months or if any such refusal has been withdrawn, an international registration at WIPO has the same effect in the EU as an application for a registered Community design. In addition, with a single application, design protection may also be obtained in the other Members of the Geneva Act.

3.292. Industrial designs can be registered under national design systems too. Directive 98/71/EC<sup>320</sup> harmonized the main substantive provisions of the national systems, thus ensuring the application of an equivalent level of protection throughout all EU member States. The Community system and national systems coexist, but have different coverage and application requirements.

### 3.3.5.3.7 Undisclosed information

3.293. While views differ as to whether trade secrets are to be considered as a category of IPRs and their protection accordingly provided by different types of legislation, there can be no doubt about the close relationship between trade secrets and IPRs. Given that Article 39 of the TRIPS Agreement specifically mandates the protection of undisclosed information and that the European Commission addressed this matter in its 2011 blueprint for IPRs<sup>321</sup>, it is appropriate that this important area be included in this section.

3.294. Currently, the protection of trade secrets is not harmonized at EU level. Their protection is dealt with in national laws of the EU member States in a diverse manner which results in different levels of protection. Recognizing the need for protection against acts of dishonest misappropriation of know-how and other strategic business information, the European Commission has initiated work with a view to analysing the legal aspects and economic impact of trade secret infringements in order to assess whether those matters would be better dealt with at EU level.<sup>322</sup> For this purpose, a first study was commissioned by the Commission in 2011 to compare the current legal framework and practices in EU member States.<sup>323</sup> It confirmed important differences in the way in which protection was provided under national jurisdictions. In addition, the Commission, in 2012, commissioned a second study on the economics of trade secrets and the implications for the Internal Market. An industry survey to gather empirical data was launched in October 2012.<sup>324</sup>

<sup>318</sup> See Insight Consulting, oriGIN and REDD Press Release, "The economic potential of non-agricultural geographical indications in the European Union under scrutiny", 23 April 2012. Viewed at: [http://www.ecta.org/IMG/pdf/press\\_release\\_non-agricultural\\_gis.pdf](http://www.ecta.org/IMG/pdf/press_release_non-agricultural_gis.pdf).

<sup>319</sup> OJEU L 3/1, 5 January 2002.

<sup>320</sup> OJEU L 289/28, 28 October 1998.

<sup>321</sup> See European Commission documents COM(2011) 287 final, 24 May 2011. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf).

<sup>322</sup> See European Commission documents COM(2011) 287 final, 24 May 2011. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf).

<sup>323</sup> Hogan Lovells International LPP (2010).

<sup>324</sup> More information on the survey is viewed at European Commission online information. Viewed at: [http://ec.europa.eu/internal\\_market/iprenforcement/trade\\_secrets/index\\_en.htm#maincontentSec1](http://ec.europa.eu/internal_market/iprenforcement/trade_secrets/index_en.htm#maincontentSec1).

3.295. The requirement under Article 39.3 of the TRIPS Agreement to protect clinical test data under certain conditions forms an integral part of the section on the protection of undisclosed information. In the EU, Directive 2004/27/EC<sup>325</sup> provides for a regime of exclusivity periods of eight plus two plus one years during which generic manufacturers cannot rely on the data submitted by the originator company to the regulatory authorities, nor market the generic product. Accordingly, an application for an abridged authorization, under which the applicant has to demonstrate that the medicinal product is a generic of a reference medicinal product, but is not required to submit his own data, is only possible eight years after the first marketing approval has been granted in a member State or in the Community. In addition, the generic medicinal product thus authorized can only be put on the market after ten years from the initial authorization of the reference product. This period is extended to a maximum of eleven years if, during the first eight years after the initial authorization, new therapeutic indications with a significant clinical benefit have been authorized.

3.296. The link between protection of clinical test data and access to such data has been prominently illustrated by a decision taken by the European Medicines Agency (EMA) in December 2010 when it adopted a new policy designed to implement the concept of public access to EMA documents.<sup>326</sup> Since then, access to 1.5 million pages of clinical trial data has been granted by the EMA. During the second phase of implementation, the EMA intends to proactively publish clinical trials data that applicants submit to the agency within the framework of the authorization process. The disclosure of such data is considered to be in the public interest as it allows independent researchers and other interested groups to screen the raw data and to assess for themselves the efficacy and potential side effects of a product. The modalities of providing such proactive access to clinical trial data are under consideration. The new policy is expected to enter into force in January 2014.<sup>327</sup>

3.297. Initially, the EMA had refused access to the data, arguing that disclosure would undermine the commercial interests of the owners of the data, referring, *inter alia*, to Article 39.3 of the TRIPS Agreement. The envisaged publication of clinical trials data does not appear, however, to affect the protection of such data against unfair commercial use, which, in the case of the EU, is achieved through the above-described periods of data exclusivity.

### 3.3.5.4 Enforcement

#### 3.3.5.4.1 Legal basis at EU level

3.298. Enforcement of IPRs in the EU is based on Directive 2004/48/EC on the Enforcement of IPRs (IPRED) and Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society.<sup>328</sup> Enforcement at the EU borders is covered by Council Regulation (EC) No. 1383/2003 and implementing Commission Regulation (EC) No. 1891/2004.<sup>329</sup>

3.299. An overview of the main enforcement provisions is provided in Table 3.15. The earlier responses provided by the EU to the TRIPS Council's Checklist of Issues on Enforcement<sup>330</sup> also provide some useful background information regarding the EU's framework for IPR enforcement.<sup>331</sup> However, this information dates back to 1997 and needs updating in order to reflect a number of important legislative changes during the past 16 years.

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<sup>325</sup> Directive 2004/27/EC of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ L136/34, 30 April 2004).

<sup>326</sup> European Medicine Agency (2010).

<sup>327</sup> See European Medicine Agency Press Release EMA/754763/2012, 23 November 2012. Viewed at: [http://www.ema.europa.eu/docs/en\\_GB/document\\_library/Press\\_release/2012/11/WC500135088.pdf](http://www.ema.europa.eu/docs/en_GB/document_library/Press_release/2012/11/WC500135088.pdf).

<sup>328</sup> OJEU L 157/45, 30 April 2004; and OJEU L 167/10, 22 June 2001.

<sup>329</sup> OJEU L 196/7, 2 August 2003; and OJEU L 328/16, 30 October 2004.

<sup>330</sup> WTO document IP/C/5, 30 November 1995.

<sup>331</sup> WTO document IP/N/6/EEC/1, 13 February 1997.

Table 3.15 Overview of selected IP enforcement measures

Matter	Key elements	Brief description or quote from the relevant provisions	Legal basis or source
<b>General procedures and remedies</b>	Has a distinct judicial system been established for the enforcement of IPRs (i.e. are there specialized courts, or chambers within courts for patent litigation or other IPR-related law suits)?	At EU level, there is no specific provision on the establishment of specialized judicial systems. This decision is left to member States	Directive 2004/48/EC on IPR Enforcement (IPRED)
	Do judicial authorities have the authority to award injunctions against innocent infringers (i.e. those infringing without knowing or having reasonable grounds to know that their actions constitute infringement) or in the case of use by governments, or authorized by governments?	Yes, injunctions may be issued against any infringer. The Directive only distinguishes between innocent infringers and those that knowingly or with reasonable grounds to know engaged in an infringing activity, for damages. There are no specific provisions on any "use by governments or authorized by governments"	Article 11 of Directive 2004/48/EC
	Is it possible to recover damages and/or lost profits in case of IPR infringement?	Yes	Article 13 of Directive 2004/48/EC
	May the authorities order the removal from the channels of commerce or the destruction of (i) infringing goods and (ii) the materials/ instruments used to produce such goods?	Yes	Article 10 of Directive 2004/48/EC
	Are courts authorized to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods?	Yes	Article 8 of Directive 2004/48/EC
	Do courts have the authority to order an applicant who has abused enforcement procedures to pay adequate compensation to the defendant?	Yes, including provisional measures	Articles 7(4) and 9(7) of Directive 2004/48/EC
<b>Provisional measures</b>	Under which circumstances and for what purposes may a judicial/ administrative authority authorize provisional measures in the area of intellectual property law?	Provisional measures are ordered by the competent authorities in order to prevent an imminent infringement of an IPR or to forbid the continuation of such an infringement	Article 9(1) of Directive 2004/48/EC
	After what time period are provisional measures revoked, or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case have not been initiated?	Provisional measures are to be revoked if the applicant does not initiate proceedings leading to a decision on the merits of the case within a reasonable period of time to be determined by the judicial authority ordering the measure, or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days	Article 9(5) of Directive 2004/48/EC

Matter	Key elements	Brief description or quote from the relevant provisions	Legal basis or source
<b>Border measures</b>	What types of goods may be subject to border enforcement procedures (e.g. goods infringing trademarks, copyrights, patents, GIs, etc.)?	Border measures apply to: (i) counterfeit goods, including any trademark symbol and packaging materials; (ii) pirated goods; and (iii) goods infringing a patent, a supplementary protection certificate, a national or Community plant variety right, designations of origin or geographical indications, or geographical designations	Article 2 of Council Regulation (EC) No. 1383/2003
	Under what circumstances may the competent authorities act upon their own initiative – <i>ex officio</i> – to suspend the release of goods and, if they may do so, must the authorities notify the right holder?	<i>Ex officio</i> action is possible where the customs authorities have sufficient ground for suspecting that goods infringe an IPR. The right holder shall be informed in order to enable him to submit an application for action	Article 4 of Council Regulation (EC) No. 1383/2003
	Under what circumstances may the authorities allow the re-exportation of infringing goods in an unaltered state or subject goods to a different customs procedure?	Under no circumstances	Article 16 of Council Regulation (EC) No. 1383/2003
<b>Criminal procedures</b>	What infringements of intellectual property rights are considered criminal offences (e.g. wilful trademark counterfeiting and copyright piracy on a commercial scale; other IPRs infringements; etc.)?	EU legislation covers only civil and administrative measures. Criminal procedures fall within the competence of EU member States	See Article 2(3) of Directive 2004/48/EC for the definition of its scope in respect of criminal procedures and penalties
	What type of criminal sanctions may be imposed?		
	Do private persons have standing to initiate criminal proceedings?		
	Is there a specialized law enforcement unit for IPR crimes? If so please share any information on its size and operational structure.		

Source: WTO Secretariat, based on information provided by the European Commission.

### 3.3.5.4.2 IPR enforcement at the EU's external borders

3.300. At the external border of the EU, Customs authorities may suspend the release of or detain goods that are suspected of infringing or found to have infringed IPRs. In most cases, Customs authorities act upon applications from right holders. However, Customs may also act *ex officio* if they have sufficient grounds for suspecting that goods infringe an IPR. In such cases, they will notify the detention/suspension to the importer and the right holder. The right holder must submit an application for action within three working days of receiving the notification. If no application is submitted within this period, the goods are released.<sup>332</sup>

3.301. Results of Customs action are published annually by the European Commission. In particular, the annual reports provide statistical information and data about Customs interventions which support the analysis of IPR infringements occurring in the EU. According to the latest

<sup>332</sup> WTO document WT/TPR/M/248/Add.1, p. 421, 31 August 2011; and Council Regulation (EC) No. 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

report<sup>333</sup>, there were over 91,000 cases of goods being detained by Customs in 2011, which represents more than a 1,000% increase since 2001, due, among others, to internet sales. In total, almost 115 million articles were detained, amounting to a domestic retail value of over €1.27 billion (Table 3.16). Medicines accounted for 24% of the articles detained, followed by packaging materials (21%) and cigarettes (18%). Due to the increase of detentions in the field of medicines, the share of products potentially harmful to human health and safety has almost doubled since 2010, amounting to 28.6% in 2011.

**Table 3.16 Enforcement of intellectual property rights, 2009-11**

	2009	2010	2011
<b>Customs actions</b>			
Applications by right holders	14,797	18,330	20,566
Number of cases	43,572	79,112	91,254
Number of articles	117,959,298	103,306,928	114,772,812
<b>Breakdown of cases in 2011</b>			<b>(%)</b>
<b>IP right in relation to detained articles</b>	Trademark		97.00
	Patent		0.73
	Copyright/related right		1.12
	Design and model right		1.14
	<b>Results</b>	Destruction of goods	
	Court case initiated		12.49
	No action undertaken		4.48
	Pending case		2.3
	Original goods		3.03
	Settlement out of court		0.01
<b>Cases per procedure</b>	Imports		92.92
	Transit EU		4.13
	Transit		1.31
	Warehouse		0.26
	Transshipment		0.21
	Export		1.17
	<b>Top 3 categories by product</b>	Medicines	
	Packaging material		21.21
	Cigarettes		17.63

Source: European Commission (2012), *Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border – 2011*. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/2012\\_ipr\\_statistics\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2012_ipr_statistics_en.pdf).

3.302. The close cooperation between Customs and the private sector is illustrated by the steadily increasing number of applications for action submitted by right holders to Customs, raising from 2,888 in 2004 to 20,566 in 2011, when less than 3% of interventions by Customs were initiated *ex officio*. In 90% of the detentions, the goods were destroyed following either an agreement between the holder of the goods and the right holder or the initiation of a court case by the right holder to determine the infringement. In 93% of the cases, Customs action began while the goods were under an import procedure; in 4%, goods were discovered while in transit to the EU, and in 1% in transit to a declared destination outside the EU.

3.303. In May 2010, Brazil and India both requested consultations with the EU and the Netherlands regarding the Customs treatment of medicines in transit through EU ports, produced in India and destined for developing countries.<sup>334</sup> Individual consignments of medicines declared to be in transit were temporarily detained by certain EU member States' Customs authorities on grounds of alleged infringement of intellectual property rights, as provided for under Council Regulation (EC) No. 1383/2003 and the national law of the member State concerned. Following an understanding reached with the Government of India<sup>335</sup>, the European Commission, in

<sup>333</sup> DG Taxation and Customs Union (2012b).

<sup>334</sup> WTO documents WT/DS408/1 and WT/DS409/1, 19 May 2010.

<sup>335</sup> See the Government of India Press Release, 28 July 2011. Viewed at: <http://pib.nic.in/newsite/erelease.aspx?relid=73554>.



February 2012, issued "Guidelines concerning the enforcement by EU Customs authorities of IPRs with regards to goods, in particular medicines, in transit through the EU".<sup>336</sup> These guidelines clarified the application of Council Regulation No. 1383 and took account of the findings in a European Court of Justice judgment of 1 December 2011.<sup>337</sup> In particular, the guidelines laid down the understanding that the mere fact that medicines are transiting through the EU territory and are subject to a patent rights in the EU "does not in itself constitute enough grounds for customs authorities to suspect that those medicines are infringing patent rights." However, a substantial likelihood of diversion of such medicines onto the EU market "may constitute enough grounds for customs authorities to suspect that the medicines at stake infringe patent rights" and justify the detention. Council Regulation (EC) No. 1383/2003 is currently being modified in order to further clarify the procedures so that additional certainty is provided to operators and legitimate trade preserved (see paragraph 3.305 below.).

3.304. The EU Customs Action Plan to combat IPR infringements for 2009-2012<sup>338</sup> listed a number of targeted measures, including the review of existing IPR legislation, stronger cooperation with right holders, intensified international cooperation on IPR enforcement and awareness raising. The European Commission, in cooperation with EU member States, submitted a report on the implementation of the Action Plan in October 2012 and recommended the adoption of a new Action Plan.<sup>339</sup> The Council followed the Commission recommendation and, on 10 December 2012, adopted a Resolution which endorsed a new EU Customs Action Plan.<sup>340</sup> It sets the following strategic objectives for the years 2013 to 2017: effectively implementing and monitoring new legislation; tackling major trends in trade of IPR-infringing goods, including throughout the international supply chain; and strengthening cooperation with the European Observatory and law-enforcement authorities.

3.305. Among the measures foreseen by the Action Plan 2009-2012 was the review of Council Regulation (EC) No. 1383/2003. As a follow-up, the Commission submitted a proposal for a revised Regulation in 2011.<sup>341</sup> The draft Regulation aims to strengthen Customs enforcement of IPRs, by extending the scope to trade names, topographies of semiconductor models and utility models, and by including infringements resulting from parallel trade and devices to circumvent technological protection measures. It also targets a further streamlining and simplification of Customs procedures. Finally, the proposal seeks to establish legal clarity with respect to certain provisions in the current Regulation that gave raise to concerns regarding their impact on legitimate trade in generic medicines transiting the EU. The proposal is expected to be adopted in the first half of 2013.

#### 3.3.5.4.3 IPR enforcement within the EU

3.306. The EU has several Directives containing rules applicable to the (online) enforcement of IP rights, such as Directive 2004/48 (the Enforcement Directive), which establishes general applicable rules regarding IPR enforcement, and Directive 2000/31 (E-commerce Directive), which establishes minimum applicable rules regarding the conditional exemption of liability for internet service providers (ISPs). Certain flexibilities are left to member States in implementing these provisions. For example, in many member States, ISPs cannot store IP addresses for the specific purpose of online copyright enforcement; exceptions include France.

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<sup>336</sup> DG Taxation and Customs Union (2012a).

<sup>337</sup> Joined cases C-446/09 (Philips v LuchengMeijing) and C-495/09 (Nokia v Her Majesty's Commissioners of Revenue and Customs).

<sup>338</sup> Council Resolution of 16 March 2009 (OJ C 71/1, 25 March 2009).

<sup>339</sup> European Commission document SWD(2012) 356 final, 23 October 2012. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/report\\_action\\_plan\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/report_action_plan_en.pdf).

<sup>340</sup> Council Resolution on the EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/action\\_plan\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/action_plan_en.pdf).

<sup>341</sup> European Commission document COM(2011) 285 final, 24 May 2011. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/common/legislation/proposals/customs/com\(2011\)285\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/legislation/proposals/customs/com(2011)285_en.pdf); the latest text as agreed by the Council's Permanent Representatives Committee on 21 December 2012 can be viewed at Council of the European Union online information. Viewed at: <http://register.consilium.europa.eu/pdf/en/13/st05/st05129.en13.pdf>.



3.307. Following a December 2010 Commission report on the application of Directive 2004/48/EC<sup>342</sup>, the Commission launched a public consultation on the findings of the report in preparation for a possible review of the Directive.<sup>343</sup> According to a Commission summary of 8 July 2011 of the issues raised during the consultation<sup>344</sup>, diverse views were expressed as to whether the Directive needed to be adapted in order to effectively respond to challenges posed by the digital environment. Other topics covered included the scope of the Directive, the application of injunctions to intermediaries, the right of information and privacy laws and the need to put dissuasive damages in place. Since 2011, the Commission is conducting an extensive public consultation on the civil enforcement of IPRs within the Internal Market, including the functioning of Directive 2004/48/EC.<sup>345</sup> A Commission Communication that presents conclusions and possible follow-up initiatives to improve the system is expected by end 2013.

3.308. Concerned by the damaging impact of sales of counterfeit products over the internet, the Commission played an instrumental role in setting up a dialogue between major private-sector stakeholders, including companies and associations, which led to the signing of a Memorandum of Understanding, on 4 May 2011, on the sale of counterfeit goods over the internet.<sup>346</sup> The MoU establishes a code of practice designed to effectively combat the sale of such goods, including through notice and take-down procedures, and to strengthen collaboration between the signatories. A report on the functioning of the MoU which aims at developing good practices in order to tackle online counterfeiting will be adopted in April 2013. Signatories are considering extending the MoU to companies from other industry sectors, as well as broadening its scope of application.

#### 3.3.5.4.4 Measuring the impact of counterfeiting and piracy

3.309. To address the steady increase in counterfeiting and piracy, the Commission launched the European Observatory on Counterfeiting and Piracy in April 2009.<sup>347</sup> Its objectives are to gather and monitor information regarding counterfeiting and piracy on the EU's internal market, to exchange experiences and share best practices in combating counterfeiting and piracy, and to raise public awareness. Acknowledging that IPR enforcement requires close coordination between public administrations and businesses, the Observatory's membership is composed of representatives from the public and private sectors, including European and national associations actively engaged in combating counterfeiting and piracy. The Observatory was initially run by Commission staff and did not dispose of any sustainable structure to carry out the tasks it had been attributed. Through a Memorandum of Understanding of 15 April 2011, the Office for Harmonization in the Internal Market (OHIM) and the European Commission therefore agreed on a set of temporary arrangements under which the OHIM undertook to support and assist the Commission in the delivery of the tasks of the Observatory.<sup>348</sup> By means of Regulation (EU) No. 386/2012 of 19 April 2012<sup>349</sup>, the OHIM was then formally entrusted with tasks related to IPR

<sup>342</sup> European Commission document COM(2010) 779 final, 22 December 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0779:FIN:EN:PDF>.

<sup>343</sup> Europa online information. Viewed at: [http://ec.europa.eu/internal\\_market/consultations/2011/intellectual\\_property\\_rights\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/intellectual_property_rights_en.htm).

<sup>344</sup> European Commission document COM/2010/779 final, July 2011. Viewed at: [http://ec.europa.eu/internal\\_market/consultations/docs/2011/intellectual\\_property\\_rights/summary\\_report\\_replies\\_consultation\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2011/intellectual_property_rights/summary_report_replies_consultation_en.pdf). See also DG Internal Market and Services (2011).

<sup>345</sup> Information with respect to relevant public hearings and consultations can be viewed at European Commission online information. Viewed at: [http://ec.europa.eu/internal\\_market/iprenforcement/directive/index\\_en.htm](http://ec.europa.eu/internal_market/iprenforcement/directive/index_en.htm).

<sup>346</sup> The Memorandum of Understanding of 4 May 2011 can be viewed at European Commission online information. Viewed at: [http://ec.europa.eu/internal\\_market/iprenforcement/docs/memorandum\\_04052011\\_en.pdf](http://ec.europa.eu/internal_market/iprenforcement/docs/memorandum_04052011_en.pdf).

<sup>347</sup> This initiative is based on the Council Resolution on a Comprehensive European Anti-counterfeiting and Anti-piracy Plan of 25 September 2008 (Council of European Union online information. Viewed at: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/intm/103037.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/intm/103037.pdf)) and the European Commission document COM(2009) 467 final, 11 September 2009. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=com:2009:0467:fin:en:pdf>. Council Resolution of 1 March 2010 on the enforcement of IPR in the internal market (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:056:0001:0004:en:pdf>) added further elements to the tasks of the Observatory.

<sup>348</sup> The Memorandum of Understanding of 15 April 2011 can be viewed at European Commission online information. Viewed at: [http://ec.europa.eu/internal\\_market/iprenforcement/docs/observatory/memo\\_understanding\\_en.pdf](http://ec.europa.eu/internal_market/iprenforcement/docs/observatory/memo_understanding_en.pdf).

<sup>349</sup> OJ L 129/1, 16 May 2012.

enforcement. These include awareness raising, the establishment of a transparent methodology for the collection of reliable data regarding IPR infringements and their economic value, the dissemination of best practices and the development of training programmes for officials from member States. In order to carry out those tasks, the OHIM has been asked to assemble at least once a year public and private sector representatives of the Observatory, which has been renamed the European Observatory on Infringements of IPRs, thus reflecting the attribution of extended tasks.

3.310. As a contribution to developing evidence-based IP policies, the Commission is also considering the development of a methodology to better quantify the scope, scale and impact of IPR infringements on the EU's economy. A study, commissioned by the Directorate General for the Internal Market, found that there is currently no reliable or accepted methodology to estimate the extent of counterfeiting and piracy. It suggested possible objective and evidence-based approaches on how to define such a methodology so that the impact of infringements on sales can be more accurately measured.<sup>350</sup>

#### 3.3.5.4.5 International cooperation in IPR enforcement

3.311. Based on the above-mentioned Regulation (EU) No. 386/2012, the OHIM has also been tasked to build strategies and develop tools to enforce IPRs through international cooperation with IP offices in third countries, as well as to develop technical-assistance programmes for third countries.

3.312. Taking into account a recent study<sup>351</sup> assessing the implementation of the initial (2004) Strategy for the enforcement of intellectual property rights in third countries<sup>352</sup>, and input from a public consultation held in May 2011<sup>353</sup>, the Commission has submitted an indicative roadmap leading towards the adoption of a revised strategy for the protection and enforcement of intellectual property rights in third countries.<sup>354</sup> As well as fine-tuning the 2004 strategy, the revised approach is designed to better take into account the situation in developing countries and to enhance transparency and visibility.

3.313. The EU continues to fight against counterfeiting and piracy, both unilaterally, and through bilateral, regional, and multilateral agreements. Detailed IPR clauses, particularly on enforcement and border measures, are included in several trade agreements concluded or negotiated by the EU, such as the EU-Korea Free Trade Agreement. The EU's declared objective is to ensure a balanced approach, that aims to achieve a level of protection identical to that in the EU, while acknowledging that the level of development of its trading partners needs to be taken into account.<sup>355</sup>

3.314. In parallel, enforcement and cooperation activities are being reinforced bilaterally, for example with Brazil, China, Russia, Thailand, and Ukraine, to tackle problems raised by EU right holders. These activities include structured IP dialogues, as well as a dedicated Action Plan with China focused on enhancing Customs cooperation in IPR enforcement, to reduce the amount of counterfeit and pirated goods traded bilaterally. The EU-China Action Plan has reportedly led to some progress.<sup>356</sup>

<sup>350</sup> RAND Europe (2012). An overview of the main findings was presented at the eighth session of WIPO's Advisory Committee on Enforcement on 19-20 December 2012, see WIPO document WIPO/ACE/8/7, 29 October 2012. Viewed at: [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=220162](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=220162).

<sup>351</sup> ADE (2010).

<sup>352</sup> OJ C 129/3, 26 May 2005.

<sup>353</sup> DG Trade (2011).

<sup>354</sup> Communication from the Commission on the Revised strategy for the protection and enforcement of intellectual property rights in third countries. Viewed at: [http://ec.europa.eu/governance/impact/planned\\_ia/docs/2011\\_trade\\_005\\_intellectual\\_property\\_rights\\_ipr\\_communication\\_en.pdf](http://ec.europa.eu/governance/impact/planned_ia/docs/2011_trade_005_intellectual_property_rights_ipr_communication_en.pdf).

<sup>355</sup> See European Commission documents COM(2011) 287 final, 24 May 2011. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf).

<sup>356</sup> See "Cooperation with China" under point 4.2 of European Commission document SWD(2012) 356 final, 23 October 2012. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/report\\_action\\_plan\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/report_action_plan_en.pdf).

3.315. The EU also participated in the negotiations of a plurilateral agreement, the Anti-Counterfeiting Trade Agreement (ACTA). The ACTA builds on existing international rules in the area of IP, in particular on the TRIPS Agreement, and is intended to address a number of enforcement issues where gaps were perceived in the international legal framework, including the establishment of a state-of-the-art legal framework of enforcement measures to effectively respond to the growing phenomena of counterfeiting and piracy in international trade; the promotion of sound enforcement practices; and the fostering of cooperation among the parties to address the challenges of cross-border trade in counterfeit and pirated goods. The text of the Agreement was circulated as a TRIPS Council document in October 2011.<sup>357</sup> As of February 2013, the number of countries that have ratified the ACTA was not yet sufficient for it to enter into force.

3.316. According to the Commission, the ACTA is entirely in line with the EU *acquis* and does not therefore require any changes to EU legislation.<sup>358</sup> The Council approved the signing of the ACTA on behalf of the EU in a decision taken in December 2011.<sup>359</sup> Subsequently, the ACTA was signed for the EU and 22 member States on 26 January 2012. However, the Agreement triggered an intense debate, particularly in the EU, about, among others, its impact on fundamental rights, such as freedom of speech, as well as possible restrictions regarding online content-sharing or access to medicines.<sup>360</sup> In May 2012, the Commission responded to the criticism by referring the ACTA to the CJEU for it to examine the Agreement's compatibility with EU Treaties and, in particular, the EU Charter of Fundamental Rights.<sup>361</sup> After overwhelming rejection of the ACTA by the European Parliament in early July 2012, the Commission, at its session on 19 December 2012, decided to withdraw its request for an opinion of the CJEU.<sup>362</sup>

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<sup>357</sup> WTO document IP/C/W/563, 17 October 2011.

<sup>358</sup> See European Commission documents COM(2011) 287 final, 24 May 2011. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf).

<sup>359</sup> Press Release 18708/11 of the Agriculture and Fisheries Council held in Brussels on 15-16 December 2011. Viewed at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/agricult/127031.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/agricult/127031.pdf).

<sup>360</sup> Martin (2012).

<sup>361</sup> See European Commission Press Release, "Overview of Commission's Referral of ACTA to the CJEU". Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/may/tradoc\\_149464.doc.pdf](http://trade.ec.europa.eu/doclib/docs/2012/may/tradoc_149464.doc.pdf).

<sup>362</sup> See Secretariat General of the European Commission document PV(2012), 2028 final, "Minutes of the 2028<sup>th</sup> meeting of the Commission", 15 January 2013. Viewed at: <http://ec.europa.eu/transparency/regdoc/rep/10061/2012/EN/10061-2012-2028-EN-F-0.Pdf>.

## 4 DEVELOPMENTS IN SELECTED SECTORS

### 4.1 Agriculture

#### 4.1.1 Agriculture in the European Union

4.1. Agriculture contributes about 1.3% to gross value added (GVA) in the EU and 5% to total employment.<sup>1</sup> Its importance varies considerably from one Member state to another: from less than 1% of GVA in Belgium, Germany, Luxembourg, and the United Kingdom, to over 5% in Bulgaria, Latvia, and Romania. The GVA for agriculture has recovered strongly since 2009, when it had fallen to €164 billion after the start of the global financial crises in 2008, and reached a historic high of €194 billion in 2011. The recovery in the GVA of agriculture at a time of economic difficulties in other areas has also reversed a historic trend of the declining importance of agriculture in the EU's economy as its contribution to GVA increased from 1.5% in 2009 to 1.7% in 2011.

4.2. The total value of agricultural output at basic prices was about €362 billion in 2011, the main products being milk, pigs, cattle, wheat, and forage plants (Table 4.1). While the value of output has increased for most products over the past few years, the increase in value is mostly from higher prices rather than increased production.

**Table 4.1 Agriculture production values at basic prices for selected products, 2006-11**

(€ million)

	2006	2007	2008	2009	2010	2011
<b>Value of agricultural goods output at basic prices</b>	<b>301,938</b>	<b>332,883</b>	<b>350,789</b>	<b>309,058</b>	<b>331,200</b>	<b>362,416</b>
of which:						
Milk	43,890	48,592	52,801	41,932	47,583	53,094
Pigs	31,442	29,717	32,716	31,638	30,942	34,656
Cattle	29,655	30,099	30,877	28,306	28,232	31,006
Wheat and spelt	15,732	23,184	25,462	17,058	22,569	26,925
Cauliflower, tomatoes, other fresh vegetables	28,424	29,631	29,403	27,132	29,407	26,867
Forage plants	18,926	21,816	24,713	25,341	25,041	26,569
Plants and flowers	18,546	19,883	20,365	19,566	20,449	20,409
Poultry	13,438	15,934	17,525	16,535	17,105	19,503
Wine	12,891	13,765	13,780	13,261	12,949	14,910
Maize grain	7,204	9,701	9,843	7,457	9,840	13,618

Source: Eurostat online database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> [December 2012].

4.3. The structure of agricultural production varies considerably among the Member states. While France is the biggest producer, the Czech Republic has the biggest holdings on average while the Netherlands has the biggest value of output per holding (Table 4.2).

**Table 4.2 Selected indicators for farm structure in 2010**

	Total number of holdings (Number)	Average area per holding (Hectares)	Average work force employed per holding (Annual work units)	Standard output (SO) per holding (€)	Production value at basic prices (€ million)
<b>EU-27</b>	<b>12,014,570</b>	<b>14.3</b>	<b>0.8</b>	<b>24,748</b>	<b>331,200</b>
Austria	150,170	19.2	0.8	39,151	5,678
Belgium	42,850	31.7	1.4	169,143	7,579
Bulgaria	370,490	12.1	1.1	6,847	3,234
Cyprus	38,860	3.0	0.5	11,809	654
Czech Republic	22,860	152.4	4.7	168,513	3,870
Denmark	42,100	62.9	1.2	..	9,114
Estonia	19,610	48.0	1.3	30,320	596
Finland	63,870	35.9	0.9	48,499	3,634

<sup>1</sup> Eurostat online statistics database: GVA for EU-27 at basic prices for 2011 is €11,282,595.4 million, GVA for EU-27 for the agricultural industry at basic prices for 2011 is €155,190.25 million. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home> [February 2013].

	Total number of holdings (Number)	Average area per holding (Hectares)	Average work force employed per holding (Annual work units)	Standard output (SO) per holding (€)	Production value at basic prices (€ million)
France	516,100	53.9	1.5	98,301	62,378
Germany	299,130	55.8	1.8	138,716	44,094
Greece	723,010	4.8	0.6	9,267	9,521
Hungary	576,810	8.1	0.7	9,086	5,653
Ireland	139,890	35.7	1.2	30,722	5,382
Italy	1,620,880	7.9	0.6	30,514	38,263
Latvia	83,390	21.5	1.0	9,320	858
Lithuania	199,910	13.7	0.7	7,635	1,873
Luxembourg	2,200	59.6	1.7	122,072	299
Malta	12,530	0.9	0.4	7,653	119
Netherlands	72,320	25.9	2.2	261,753	21,566
Poland	1,506,620	9.6	1.3	12,602	19,157
Portugal	305,270	12.0	1.2	15,199	6,037
Romania	3,859,040	3.4	0.4	2,700	13,960
Slovakia	24,460	77.5	2.3	70,769	1,673
Slovenia	74,650	6.5	1.0	12,233	1,089
Spain	989,800	24.0	0.9	34,525	38,825
Sweden	71,090	43.1	0.8	52,515	4,633
United Kingdom	186,660	84.0	1.4	104,754	21,459

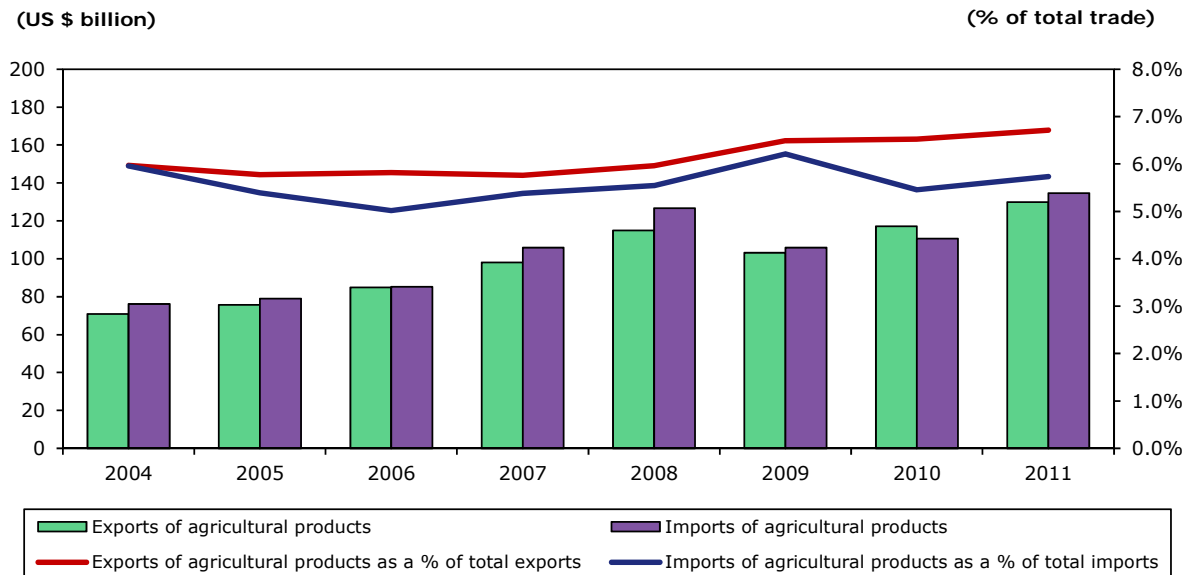
.. Not available.

Source: Eurostat online database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home> [December 2012].

#### 4.1.2 Trade

4.4. The EU is the biggest importer of agricultural products (WTO definition)<sup>2</sup> in the world with imports recovering rapidly from a fall in 2009 to reach a new high of US\$135 billion in 2011. It is also one of the biggest exporters in the world of agricultural products with US\$130 billion of agricultural exports in 2011 (Chart 4.1 and Tables 4.3 and 4.4). In most years the EU has a deficit in agricultural trade, but in 2010 it had a surplus of about US\$6.5 billion as exports recovered more quickly from the decline in trade seen in 2009 before the deficit reappeared in 2011.

Chart 4.1 Exports and imports of agriculture products, 2004-11



Source: UNSD Comtrade.

<sup>2</sup> For the purposes of this section of the Trade Policy Report, the definition of agriculture product used is that set out in Annex 1 of the Agreement on Agriculture where fish and fish products are taken to include HS Headings 020840, 03, 051191, 1504, 1603, 1604, 1605, and 230120. Fisheries are addressed in section 4.2 below.

Table 4.3 Imports of selected agricultural products, 2005-11

HS 2002			2005	2006	2007	2008	2009	2010	2011
	<b>Total imports of agricultural products</b>	<b>US\$ million</b>	<b>79,064</b>	<b>85,123</b>	<b>105,808</b>	<b>126,692</b>	<b>105,888</b>	<b>110,634</b>	<b>134,575</b>
0901	Coffee	'000 tonnes	2,531	2,683	2,752	2,765	2,717	2,789	2,774
		US\$ million	4,649	5,490	6,664	8,247	7,338	8,750	13,112
2304	Oil-cake	'000 tonnes	22,268	22,391	23,551	22,852	20,706	21,585	20,877
		US\$ million	5,100	5,052	6,738	9,709	8,497	8,457	8,938
1201	Soya beans	'000 tonnes	14,432	14,075	15,218	14,425	12,903	13,469	12,149
		US\$ million	3,790	3,647	5,243	7,530	5,671	5,945	6,586
1801	Cocoa beans	'000 tonnes	1,409	1,335	1,459	1,453	1,503	1,375	1,555
		US\$ million	2,332	2,267	2,882	3,576	4,320	4,535	5,145
1511	Palm oil	'000 tonnes	4,028	4,272	4,408	4,555	5,351	5,438	4,639
		US\$ million	1,786	2,024	2,901	4,389	3,716	4,206	5,034
0803	Bananas	'000 tonnes	3,983	4,453	4,763	4,925	4,592	4,601	4,712
		US\$ million	3,109	3,217	3,770	4,338	3,850	3,705	3,972
2204	Wine of fresh grapes	'000 tonnes	1,226	1,227	1,331	1,272	1,311	1,373	1,427
		US\$ million	2,973	3,040	3,724	3,621	3,254	3,140	3,330
1701	Sugar	'000 tonnes	3,175	3,269	3,062	3,306	3,063	3,105	4,413
		US\$ million	1,736	1,886	1,886	2,112	1,783	1,699	3,299
0802	Other nuts, fresh or dried	'000 tonnes	438	460	487	504	501	494	506
		US\$ million	2,716	2,711	2,754	2,837	2,450	2,827	3,257
2401	Unmanufactured tobacco	'000 tonnes	572	564	621	597	613	597	630
		US\$ million	2,146	2,159	2,501	2,433	2,771	2,875	3,216

Source: UNSD Comtrade.

Table 4.4 Exports of selected agricultural products, 2005-11

HS 2002			2005	2006	2007	2008	2009	2010	2011
	<b>Total exports of agricultural products</b>	<b>US\$ million</b>	<b>75,625</b>	<b>84,956</b>	<b>98,128</b>	<b>114,974</b>	<b>103,095</b>	<b>117,132</b>	<b>129,863</b>
2208	Alcohol strength less than 80 % vol	'000 tonnes	1,010	1,107	1,155	1,122	1,039	1,183	1,376
		US\$ million	6,971	8,061	9,098	9,154	7,991	9,378	10,679
2204	Wine of fresh grapes	'000 tonnes	1,509	1,839	1,893	1,799	1,665	2,085	2,331
		US\$ million	5,857	6,957	8,272	9,205	7,535	8,913	10,231
1001	Wheat and meslin	'000 tonnes	10,639	13,978	8,448	18,185	20,603	22,285	17,488
		US\$ million	1,554	2,204	2,182	6,157	4,628	5,048	5,361
2106	Food preparations, nes	'000 tonnes	753	808	855	868	919	936	1,027
		US\$ million	3,235	3,746	4,346	4,725	4,750	4,676	5,115
0203	Meat of swine	'000 tonnes	793	901	907	1,230	1,008	1,260	1,588
		US\$ million	2,217	2,585	2,738	3,697	2,896	3,461	4,373
0406	Cheese and curd	'000 tonnes	551	587	596	555	577	676	682
		US\$ million	2,525	2,785	3,347	3,781	3,301	3,948	4,051
1901	Malt extract	'000 tonnes	620	638	686	701	726	818	942
		US\$ million	1,764	1,980	2,537	3,000	2,902	3,282	3,853
0402	Milk, cream concentrated or with added sugar	'000 tonnes	882	730	798	887	916	1,070	1,154
		US\$ million	2,057	1,758	2,736	3,445	2,350	3,393	3,804
1806	Chocolate	'000 tonnes	388	515	461	476	442	477	589
		US\$ million	1,649	2,034	2,529	2,848	2,633	2,913	3,379
2402	Cigars, cigarettes, etc.	'000 tonnes	133	132	130	168	175	181	205
		US\$ million	1,784	1,858	1,978	2,465	2,404	2,575	2,968

Source: UNSD Comtrade.

4.5. Trade in agriculture products is dispersed among many products although the main imports tend to be of raw products for processing while the main exports tend to be processed products. The most notable trend in trade in the 2005 to 2011 period has been that the value of trade in many agricultural goods has increased at a much faster rate than the quantity: for example, in the 2005-11 period, imports of coffee (HS0901) were fairly constant at about 2.7 million tonnes, but the value of imports increased from US\$4.6 billion to US\$13.1 billion while imports of soya beans (HS1201) declined from 14.4 million tonnes to 12.1 million tonnes while the value increased from US\$3.8 billion to US\$6.6 billion (Table 4.3).



### 4.1.3 Agriculture policies

4.6. In 2007, the European Agricultural Guidance and Guarantee Fund (EAGGF) was replaced by two separate funds:

- the European Agricultural Guarantee Fund (EAGF) that covers Pillar I which includes market measures and direct payments, in particular the Single Payment Scheme and the Single Area Payment Scheme; and
- the European Agricultural Fund for Rural Development (EAFRD) that covers Pillar II which includes measures aimed at addressing challenges faced by the EU's rural areas, such as assistance to less-favoured areas, investment aids for agriculture and forestry, and payments under some environmental programmes.

4.7. Over the past decades, the CAP has been substantially reformed, including the Health Check in 2008 which continued the direction of reforms of the Mid-Term Review that was agreed in 2003. However, over the past two years, there have not been any significant changes to the Common Agricultural Policy although implementation of the reforms has continued. As a result of these reforms and relatively high international prices, the level of support provided to agricultural producers has continued to decline, as measured by both the Producer Support Estimate and the Aggregate Measurement of Support (see section 4.1.4).

4.8. It is expected that further reforms of the CAP will be decided in 2013 for implementation in 2014. In April 2010, the Commissioner for Agriculture and Rural Development launched a public debate on the future of the CAP and, in October 2011, the Commission presented a set of legal proposals and an impact assessment for further reforms.<sup>3</sup> Currently, the proposals of the Commission are being discussed in the inter-institutional process with the European Parliament and the Council. According to the Commission, post-2013 reforms are expected to continue the direction towards market orientation of policy while decoupled direct payments will remain the core of CAP spending. However, the reform post-2013, like earlier reforms, will not directly address market access conditions into the EU market, and tariffs, tariff quotas and the Special Agricultural Safeguard will not be affected.

#### 4.1.3.1 Domestic support

4.9. The main support to agricultural producers continues to be provided through direct payments decoupled from production and prices (Table 4.5). For the EU-15 member States<sup>4</sup> along with Malta and Slovenia, the Single Payment Scheme applies, under which each member State can provide decoupled direct payments to farmers based on a reference period (generally payments received during the 2000-02 reference period). The support under the Single Payment Scheme can be applied either in accordance with a historical model or a regional model, or a hybrid of the two.<sup>5</sup> Other member States<sup>6</sup> apply the Single Area Payment Scheme under which each hectare of eligible land qualifies for the direct payment. From end-2012, the possibility to grant direct payments linked to production has been further restricted so that only suckler cows, sheep and goats, and cotton are eligible (where 35% of the cotton component of the Single Payment Scheme remains coupled to production).

4.10. Under Article 69 of Council Regulation (EC) No. 73/2009 each member State may reserve up to 10% of the total amount available for direct payments to fund support for quality, marketing, environment, or risk management, or to assist farmers in disadvantaged areas, or types of farming in the dairy, rice, bovine meat, or sheep meat and goat meat sectors.<sup>7</sup> Under the

<sup>3</sup> European Commission online information. Viewed at: [http://ec.europa.eu/agriculture/cap-post-2013/index\\_en.htm](http://ec.europa.eu/agriculture/cap-post-2013/index_en.htm) [October 2012].

<sup>4</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and United Kingdom.

<sup>5</sup> European Commission online information. Viewed at: [http://ec.europa.eu/agriculture/direct-support/index\\_en.htm](http://ec.europa.eu/agriculture/direct-support/index_en.htm).

<sup>6</sup> Lithuania, Latvia, Estonia, Poland, Hungary, the Czech Republic, the Slovak Republic, Cyprus, Romania, and Bulgaria.

<sup>7</sup> Article 68 of Council Regulation (EC) No 73/2009, 19 January 2009, which replaced Article 69 of EC Regulation (EC) No. 1782/2003.

same provision, the amount of coupled aid provided under specific support is limited to 3.5% of the national envelope for direct aid.

**Table 4.5 Direct payments to agricultural producers in the EU, 2005/06-2009/10**

(€ million)

	2005/06	2006/07	2007/08	2008/09	2009/10
<b>Decoupled payments</b>					
Single payment scheme, separate sugar payments	14,734	30,672	31,346	31,894	31,482
Single area payment scheme	1,937	2,280	3,182	3,752	4,482
<b>Total decoupled direct payments</b>	<b>16,671</b>	<b>32,952</b>	<b>34,428</b>	<b>35,646</b>	<b>35,564</b>
<b>Other direct aids</b>					
Cereals, oilseeds, protein crops, grass silage and set aside (including durum wheat, seeds, rice)	8,064	2,185	1,882	1,839	1,759
Cotton	0	255	248	217	222
Protein crops, olives, hops, legumes, energy crops	125	186	223	192	228
Fruits and vegetables	0	0	0	301	317
Bananas	0	0	277	278	275
Beef, suckler cows	2,662	1,610	1,703	1,694	1,674
Sheep and goats	942	398	404	397	415
Dairy payments	1,454	641	4	3	0
Article 69 specific supports, not decoupled	199	423	427	427	434

Source: WTO notifications.

#### 4.1.3.1.1 Rural development

4.11. The legal framework for each member State's rural development policy, which includes the policy measures they can take, was established in 2005 for the period 2007 to 2013.<sup>8</sup> Rural-development policy is based on three "thematic axes": improving competitiveness; improving the environment; and encouraging diversification and improving the quality of life in rural areas. In addition, some of the funding should be used to support "Leader" community projects which are projects run by local organizations to address specific local problems. All national strategy plans had been agreed by end-2008 with funding from national sources (average 40%) and the EAFRD. The total value of payments in 2011 on rural development from the EU budget was €11.5 billion, most of which was under the EAFRD. EU budgetary spending on agri-environmental measures, which are part of rural development, increased under the 2007-13 strategy (after a relatively slow start in 2007) and reached €3 billion in 2010 with an additional €2 billion from member States' budgets.<sup>9</sup>

#### 4.1.3.1.2 Internal market support measures

4.12. For the purposes of this section, internal market support measures are defined as those that work inside the customs territory of the EU to increase prices through reduced production and supply control measures, or by encouraging consumption. Border measures, which can also lead to positive transfers to producers through higher prices, are dealt with under section 4.1.3.2 on export subsidies and section 4.1.3.3 on market access. In the EU, internal market support measures have included public intervention, aids to private storage, production quotas, market withdrawals, and consumer subsidies.

4.13. Historically, public intervention was one of the main tools used to maintain domestic prices in the EU, but in recent years the use of intervention has greatly declined (Table 4.6) as, according to the Commission, it has become to a genuine safety net. Since the start of the 2001/02 marketing year, the intervention price for common wheat, durum wheat, maize, barley, and sorghum has been €101.31 per tonne; for paddy rice the intervention price has been €150 per

<sup>8</sup> Council Regulation (EC) No. 1698/2005, 20 September 2005 and Council Decision 2006/144/EC, 20 February 2006.

<sup>9</sup> DG Agriculture and Rural Development (2011).

tonne since the start of the 2004/05 marketing year. Buying at the intervention price is limited to 3 million tonnes per year for common wheat and zero tonnes for durum wheat, maize, barley, sorghum and paddy rice. However, there are provisions for purchases beyond these ceilings if the "market situation and, in particular, the development of market prices, so requires."<sup>10</sup> In such cases buying-in would take place by tendering at a price not higher than the intervention price.

**Table 4.6 Intervention and private storage aids in the EU, 2007/08-2011/12**

Marketing year		2007/08	2008/09	2009/10	2010/11	2011/12
<b>Wheat</b>						
Intervention price	€/tonne	101.31	101.31	101.31	101.31	101.31
Purchases	tonnes	0	81,435	268,555	0	0
Sales	tonnes	172,147	572	23,806	231,866	38,946
<b>Barley</b>						
Intervention price	€/tonne	101.31	101.31	101.31	101.31	101.31
Purchases	tonnes	0	930,222	5,606,460	0	0
Sales	tonnes	17,662	0	659,578	4,982,192	398,623
<b>Maize</b>						
Intervention price	€/tonne	101.31	101.31	101.31	101.31	101.31
Purchases	tonnes	0	555,467	0	0	0
Sales	tonnes	2,204,677	52,305	354,243	214,586	0
<b>Sugar</b>						
Reference price white sugar	€/tonne	632.00	541.50	404.40	404.40	404.40
Purchases		0	0	0	0	0
Sales		270,000	290,000	35,000	0	0
Private storage aids (entry)		0	0	0	0	0
<b>Calendar year</b>						
		2008	2009	2010	2011	2012
<b>Butter</b>						
Intervention price	€/tonne	2,217.51	2,217.51	2,217.51	2,217.51	2,217.51
Purchases	tonnes	0	82,000	0	0	0
Sales	tonnes	0	5,000	75,000	1,500	0
Private storage aids (entry)		160,000	136,000	97,000	104,000	131,000
<b>Skimmed milk powder</b>						
Intervention price	€/tonne	1,746.90	1,698.00	1,698.00	1,698.00	1,698.00
Purchases	tonnes	0	274,000	0	0	0
Sales	tonnes	0	14,000	65,000	145,000	50,000
<b>Olive oil</b>						
Private storage aid (entry)	tonnes		110,000		100,000	200,000
<b>Beef</b>						
Intervention trigger price	€/tonne 2weeks	1,560.00	1,560.00	1,560.00	1,560.00	1,560.00
Public intervention		0	0	0	0	0
Private storage aid (entry)		0	0	0	0	0
<b>Pig meat</b>						
Purchases private storage aid	tonnes	98,919	2,161	0	141,023	0
<b>Sheep and goat meat</b>						
Private storage aid (entry)	tonnes	0	0	0	0	0

Source: European Commission.

4.14. Since July 2007, the price at which butter may be bought into public intervention has remained at €221.75 per 100 kg for butter (i.e. at 90% of the reference price of €246.39 per 100 kg) for up to 30,000 tonnes and for skimmed milk powder at €169.80 per 100 kg for up to 109,000 tonnes.

<sup>10</sup> Council Regulation (EC) No. 1234/2007, Article 13(3).

4.15. For beef and veal, the Commission may decide to open intervention when the average market price in a member State or region falls below €1,560 per tonne for two consecutive weeks. However, intervention has not been opened since 1999.

4.16. In addition to purchases into public intervention, the Commission may also open Private Storage Aids (PSA) for butter, white sugar, olive oil, beef, pig meat, sheep meat, and goat meat. Under the PSA schemes, the products remain in private ownership and the owner receives aid to cover the cost of storage for periods specified in the contracts before they can be released onto the market. In 2011, PSAs were made available for butter, olive oil and pig meat and, in 2012, for butter and olive oil (Table 4.6).

4.17. Under the Health Check decided in November 2008, milk quotas were increased by 2% in 2008 and are subject to 1% annual increases from 2009 to 2013 (except for Italy where there was a single 5% increase in 2009). In addition, an adjustment in the fat correction factor resulted in a further de facto 1% increase in quotas.<sup>11</sup> The goal is to achieve a smooth phasing-out of the milk quota system by 2015. The total quota for the EU-27 in marketing year 2011/12 was 151.1 million tonnes. Although production in the EU as a whole has been below quota, five Member states exceeded their quotas in 2010/11 and six in 2011/12. Producers that exceed their quotas are required to pay a levy of €27.83 per 100kg of production in excess of their quota to the extent they contributed to the member State's overshoot.<sup>12</sup>

4.18. Under the Milk Package agreed in December 2011 and formalized in March 2012, member States may make it compulsory for farmers and processors to have written contracts. The Package also allows farmers to negotiate collectively with processors with limits on the amount of milk subject to such negotiations: the limits are 3.5% of EU production, or 33% of national production in the member State, or 45% for a member State with production of less than 500,000 tonnes. The Package also allows member States to regulate the supply of cheeses with protected designations of origin (PDO) or protected geographical indications (PGI).<sup>13</sup>

4.19. The European School Milk Scheme remains in operation. Under the Scheme, member States are free to choose from a variety of dairy products the ones they wish to provide to schoolchildren.<sup>14</sup> In the school year 2010/11, €64 million was provided by the EU for the Scheme with no obligation for member States to contribute. Since the school year 2009/10, a similar scheme has operated for fruits and vegetables: the School Fruit Scheme.<sup>15</sup> In 2011, €57 million was provided by the EU for the latter; the scheme was also partly financed by each member State at rates that varied from 50% to 25%. In addition, support is available for free distribution of fruit and vegetables to schools, hospitals, and charities.

4.20. Support in the fruit and vegetables sector is structured through Producer Organizations, which may set up a fund to finance operational programmes approved by member States. The member States are required to establish national strategies, which define the objectives of the programmes (based on a list of objectives defined by the EU regime for fruit and vegetables) and the nature of the actions that are eligible for support under these programmes. Recognition of a producer organization is based on a number of factors including: that membership is voluntary; that the organization contributes towards the aims of the EU regime for fruit and vegetables; and based on evidence of its ability to provide services to its members. Among the eligible actions that producer organizations may choose to implement under operational programmes are: crisis prevention and management measures such as market withdrawal (where products are withdrawn from the market); non-harvesting (where no commercial produce is taken); and green harvesting (total harvesting of non-marketable products before normal harvesting). Crisis prevention and management also include promotion and communication, training, harvest insurance, and support

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<sup>11</sup> European Commission document COM(2010) 727 final, 8 December 2010. Viewed at: [http://ec.europa.eu/agriculture/milk/quota-report/com-2010-727\\_en.pdf](http://ec.europa.eu/agriculture/milk/quota-report/com-2010-727_en.pdf).

<sup>12</sup> European Commission Press Release, "Quota year 2011/12: Six Member states have exceeded their milk quota", Ref. IP/12/1116, 18 October 2012.

<sup>13</sup> Regulation (EU) No. 261/2012, Commission Implementing Regulation (EU) No. 551/2012, and Commission Delegated Regulation (EU) No. 880/2012; and European Commission online information. Viewed at: [http://ec.europa.eu/agriculture/milk/milk-package/index\\_en.htm](http://ec.europa.eu/agriculture/milk/milk-package/index_en.htm) [February 2012].

<sup>14</sup> Council Regulation (EC) No. 1234/2007 and Commission Regulation (EC) No. 657/2008.

<sup>15</sup> Council Regulation (EC) No. 1234/2007, Commission Regulation (EC) No. 288/2009, and Commission Implementing Decision of 29 March 2012.

for the administrative cost of setting up mutual funds.<sup>16</sup> In addition, they may also implement measures related to planning of production, improvement and maintenance of product quality, marketing and promotion, training and environmental actions. Producer organizations' operational funds are 50% financed from the EU budget (in some cases 60%). In 2011, the EU provided a total of over €1 billion in support of the fruit and vegetables sector, including €786 million for operational funds for producer organizations and €195 million for assistance to producer groups for preliminary recognition as producer organizations.

4.21. In June 2012, the Commissioner for Agriculture and Rural Development presented an action plan for the olive oil sector which focused on: quality and control, through measures to enhance the public image of European olive oil and to improve consumer protection and information; and strengthening the industry, by making use of all the opportunities offered by CAP reform and by engaging all stakeholders.<sup>17</sup> Most support to the sector is currently provided through quality improvement measures with €44 million provided by the EU in 2011.

4.22. Production quotas continue to apply to the sugar sector with a total EU quota of 13.3 million tonnes of sugar divided among 19 member States. However, unlike milk production, the quota can be exceeded without penalties, provided the excess is exported, sold for non-food uses (such as biofuels) or counted against the following year's quota. Sugar produced in excess of the quota does not qualify for the €26.29 per tonne of sugar beet minimum price. There are also reference prices for sugar, set at €404.40 per tonne for white sugar and €335.20 per tonne for raw sugar, and the Commission may allow Private Storage Aids if prices fall below 85% of the reference price. The reference price for white sugar has been reduced over the past few years: from €632 per tonne to €541.50 per tonne in 2008, and then to the current level of €404.40 per tonne in 2009. Public intervention for sugar ended in 2010.

#### 4.1.3.2 Export subsidies

4.23. The use of export subsidies in the EU continued to decline although they were still being used in 2011 for some products such as poultry meat, eggs, beef and veal, processed pig meat products and some Non-Annex I products (prepared foods containing eggs). In the absence of notifications to the WTO for marketing years 2010/11 or 2011/12, Table 4.7 shows the payments from the EU budget on export subsidies by budget year.<sup>18</sup>

**Table 4.7 Export refunds for agricultural products in the EU, 2007-11**

(€ million)

	Outturn 2007	Outturn 2008	Outturn 2009	Outturn 2010	Outturn 2011
Cereals	41.80	9.70	0.85	-0.37	0.05
Rice	0.05	0.00	-0.03	0.00	0.01
Sugar	509.34	501.34	179.11	9.80	1.48
Fruits and vegetables	21.74	18.60	5.16	0.39	0.05
Wine	14.03	14.54	7.34	0.00	0.00
Milk and milk products	513.38	28.83	181.10	186.44	5.42
Beef and veal	31.72	23.10	21.48	16.67	46.14
Live bovines	14.53	10.05	10.16	8.68	9.64
Pig meat	20.33	99.04	59.95	18.76	19.12
Eggs	4.80	4.34	3.14	1.97	2.78
Poultry meat	86.04	97.16	91.56	90.67	81.70
Non-annex I products	185.16	118.12	89.68	51.35	12.74
<b>Total export refunds</b>	<b>1,442.92</b>	<b>914.82</b>	<b>649.52</b>	<b>384.35</b>	<b>179.12</b>

Source: European Union budgets for 2008-2013, figures are for payments in the budget year. Viewed at: [http://ec.europa.eu/budget/biblio/documents/2013/2013\\_en.cfm#draft\\_budget](http://ec.europa.eu/budget/biblio/documents/2013/2013_en.cfm#draft_budget) [February 2013].

<sup>16</sup> Council Regulation (EC) No. 1182/2007.

<sup>17</sup> DG Agriculture and Rural Development (2012a).

<sup>18</sup> The most recent notification is WTO document G/AG/N/EU/6, 15 March 2012.

#### 4.1.3.3 Market access

4.24. The reforms of the CAP that have taken place over the last decades did not address market access directly. However, changes to preferential arrangements under the Generalized System of Preferences and as a result of bilateral trade agreements have resulted in changes to market access for many countries (Chapter 2). In addition, the Agreement on Trade in Bananas established a new bound tariff and schedule for tariff reductions for bananas.<sup>19</sup> Since 1 January 2008, all ACP exports of bananas to the EU have qualified for duty-free and quota-free access under separate trade and development agreements.<sup>20</sup>

4.25. Tariffs on agriculture products at 8.6% remain higher than those on non-agriculture products at 6.5%, and the tariff rates vary considerably from one product to another. In addition, many agriculture products are subject to non-*ad valorem* duties that also vary in type (from simple specific duties to more complex forms such as those in the Meursing Table) as well as the degree of protection applied to different products. Furthermore, for some products, particularly for fresh fruit and vegetables, seasonal duties may apply. However, the Commission pointed out that, specific duties are not in themselves complex and that increasing prices for agricultural commodities has reduced the relative degree of protection from such duties.

4.26. For some cereals, the specific duties on imports are based on the difference between 155% of the intervention price and c.i.f. import prices based on f.o.b. U.S. prices, or quotations of the Chicago Mercantile Exchange (for maize, sorghum, and rye) or the Minneapolis Grain Exchange (for common wheat) adjusted for freight costs from the U.S. to Rotterdam and other costs. Reductions to the duty may apply depending on the port of delivery. In response to high world prices, duties on these cereals can be set at lower rates and have often been set at zero, most recently during the current marketing year.<sup>21</sup>

4.27. The EU notified 112 separate tariff quotas as being in operation in the calendar year 2010 and marketing year 2009/10. As already noted, in some cases two or more quotas covered the same or similar products and some quotas are quite small.<sup>22</sup> However, the Commission noted that changes to quotas were the result of EU enlargement and subsequent GATT Article XXVIII negotiations. Furthermore, it noted that in some cases a small quota could be a commercial opportunity, for example in niche markets.

4.28. The methods used to administer and allocate tariff quotas vary: some are allocated to supplying countries while others are open to all potential suppliers. The validity of licences to import inside a quota vary from a few weeks to one year. Quotas are administered in different ways from licences on demand, to historical importers, to first-come-first-served.

4.29. Fill rates vary widely from one tariff quota to another. In the last notification for marketing year 2009/10 and calendar year 2010, out of a total of 112 tariff quotas for agricultural products, 34 were fully used, 9 had a fill rate between 80% and 99%, while 31 had a fill rate below 1%, among which 19 were managed on a first come-first served basis.

4.30. In its Uruguay Round commitments, the EU reserved the right to use the Special Agricultural Safeguard (SSG) on 539 tariff lines. However, actual use of the SSG has been on a limited range of products. The price-based SSG has been made operational for chicken, turkey, and sugar products almost continuously, with some egg products added since marketing year 2007/08. The EU has calculated trigger volumes for fruit and vegetables on a regular basis but the volume-based SSG has never been implemented.

#### 4.1.4 Domestic support levels

4.31. The most recent notification on domestic support from the EU is for marketing year 2009/10 and it shows little change from the levels seen for 2007/08 and 2008/09, which represented a

<sup>19</sup> WTO document WT/Let/868, 30 October 2012.

<sup>20</sup> Europa Press Release, "The EU-Latin America Bananas Agreements – Questions and Answers", 15 December 2009. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/557>.

<sup>21</sup> Commission Implementing Regulation (EU) No. 1010/2012.

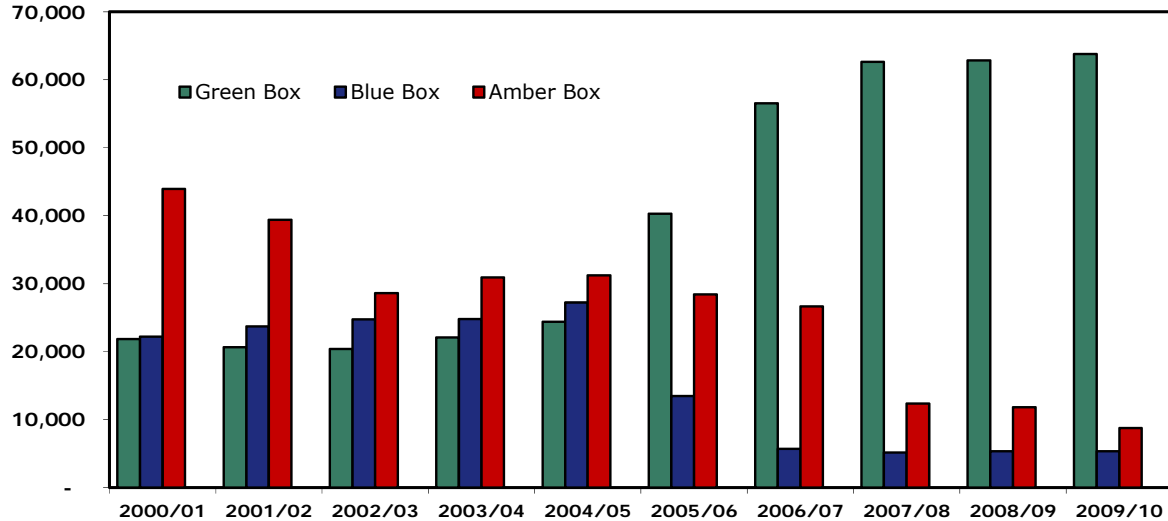
<sup>22</sup> WTO document WT/TPR/S/248/Rev.1, 1 August 2011, Chapter IV, paragraph 34.



decline compared to support notified in previous years under the Blue and Amber Boxes, and an increase in support notified under the Green Box (Chart 4.2).

**Chart 4.2 Domestic support in the European Union, 2000/01-2009/10**

(€ million)



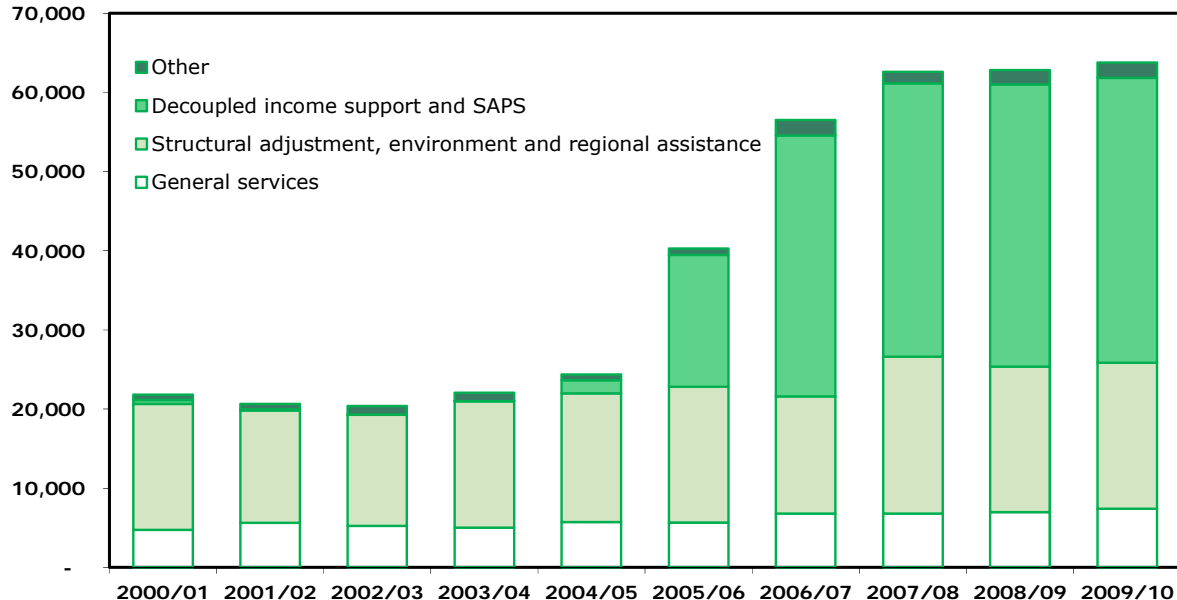
Note: The chart does not include *de minimis* support.

Source: WTO notifications.

4.32. For measures notified under the Green Box, decoupled income support remains the main element, under the Blue Box most support goes to cereal planting and beef cattle, while most support under the Amber Box is for cereals, beef and sugar (Charts 4.3, 4.4, and 4.5).

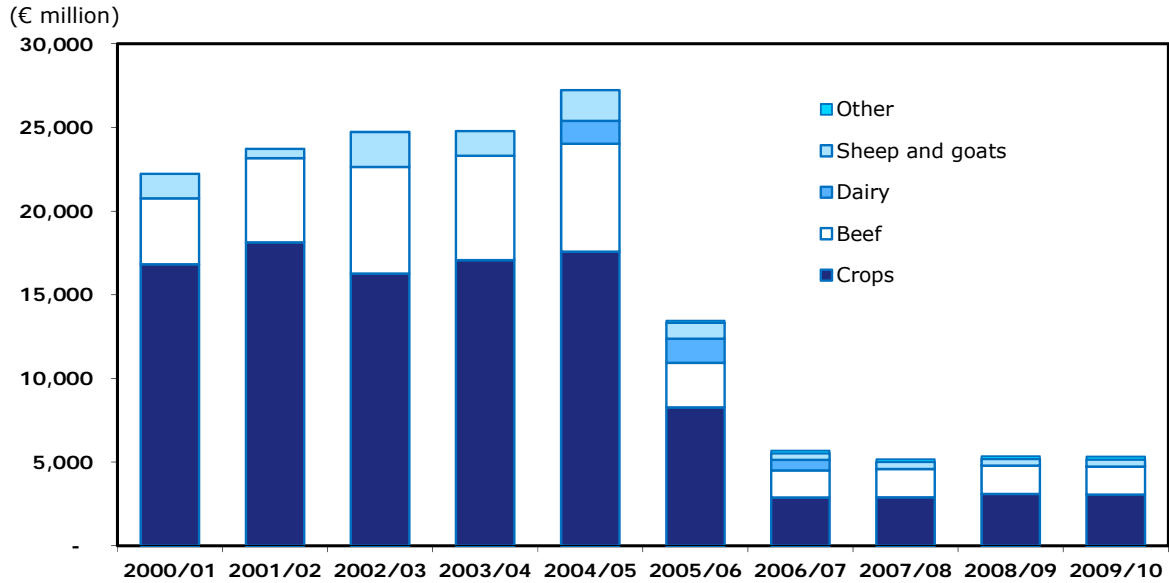
**Chart 4.3 Green Box support in the European Union, 2000/01-2009/10**

(€ million)



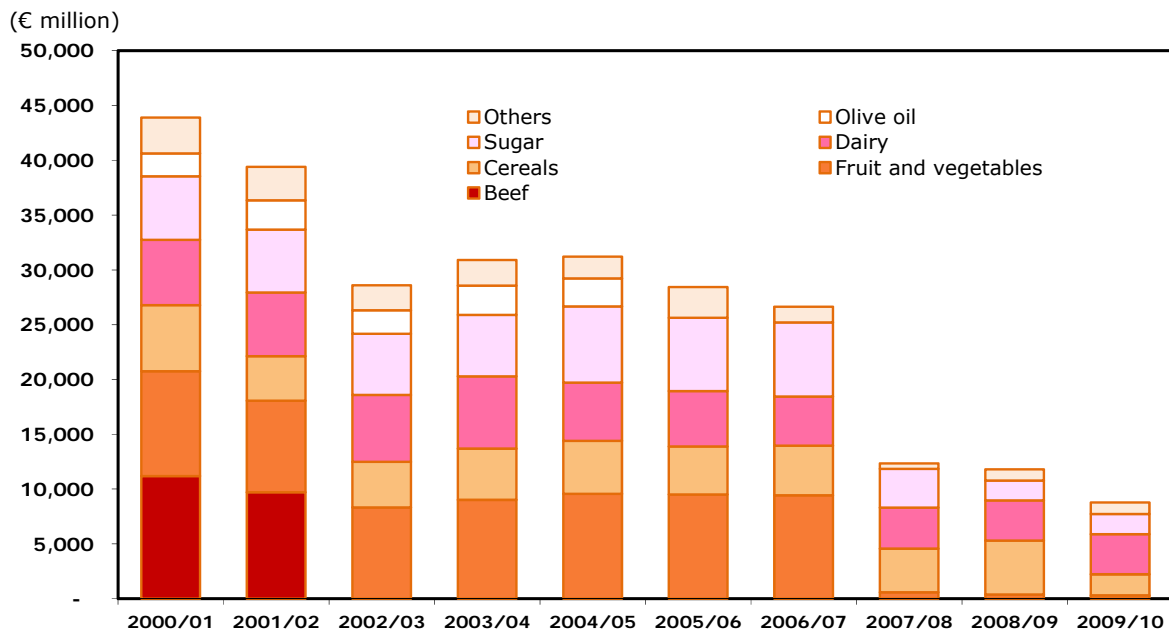
Source: WTO notifications.

**Chart 4.4 Blue Box support in the European Union, 2000/01-2009/10**



Source: WTO notifications.

**Chart 4.5 Amber Box support in the European Union, 2000/01-2009/10**



Note: The chart does not include *de minimis* support.

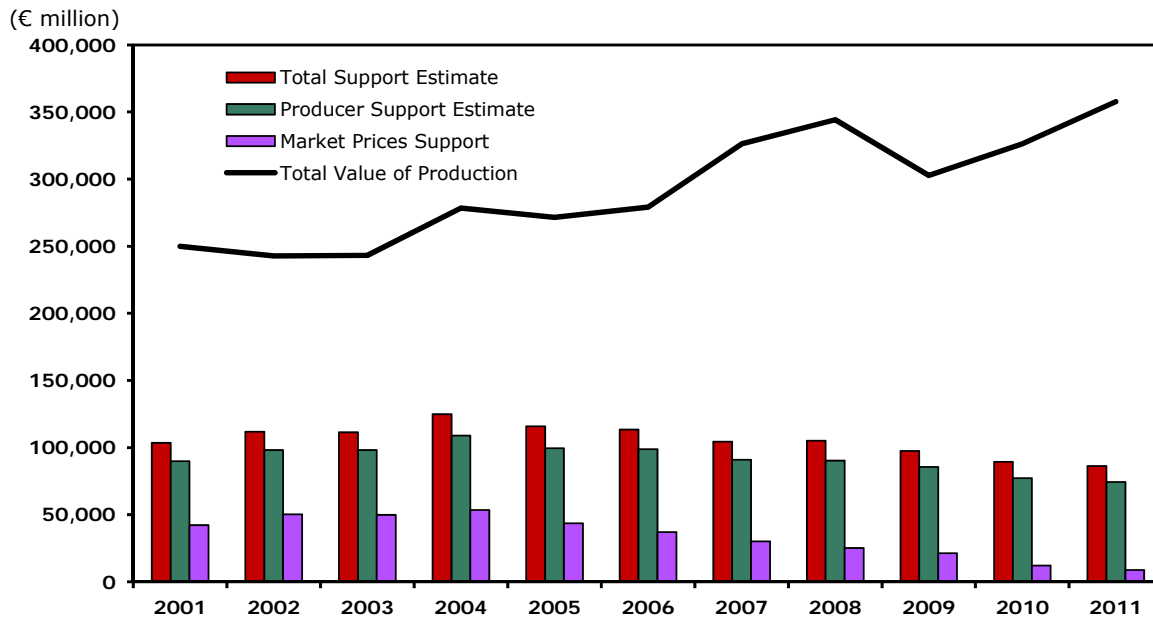
Source: WTO notifications.

4.33. The OECD has been publishing reviews of agriculture policies in the EU, other OECD countries, and some emerging economies for several years. In these publications, the value of transfers to agricultural producers is measured using the Producer Support Estimate (PSE) and associated indicators. The methodology for calculating these indicators is different from that used to calculate the AMS, and the two sets of data are not compatible or comparable. The methodology used by the OECD is evolving and was revised for the 2007 Monitoring and Evaluation report, resulting in several changes, including the method used to estimate support for specific commodities. The total PSE is "the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers, measured at the farm-gate level, arising from policy measures that support agriculture, regardless of their nature, objectives or impacts on farm production or

income. It includes market price support, budgetary payments and budget revenue forgone, i.e. gross transfers from consumers and taxpayers to agricultural producers arising from policy measures based on: current output, input use, area planted/animal numbers/receipts/incomes (current, non-current), and non-commodity criteria." Thus, the PSE includes estimates for the value of transfers provided by market-access measures, such as tariffs and tariff quotas, as well as input subsidies, direct payments to producers that are coupled to prices or production, and direct payments decoupled from prices and production.<sup>23</sup>

4.34. Although the methodology is very different from that used to calculate the Current Total AMS, as the PSE represents the value of transfers to producers rather than compliance with WTO commitments, the trends in both indicators are similar. The PSE has declined steadily over the past few years both as a percentage of gross farm incomes and in Euros: in 2011 the PSE was €74 billion (17.5% of gross farm receipts) compared to its peak of €105 billion or 38% of gross farm receipts in 1999. Although CAP reforms have contributed to the decline in support, another factor has been the increase in international prices which, along with reductions in intervention prices, have reduced the difference between prices within the EU and those at the border. The reduction in the difference between border and internal prices is reflected in the decline in the Nominal Protection Coefficient for producers to 1.03 (meaning that, on average, border and internal prices are almost the same) and in market price support which has become a relatively small component of total support to agriculture (Chart 4.6).

**Chart 4.6 Value of production, and support to agriculture in the EU-27, 2001-11**



Source: OECD PSE database.

4.35. As measured by the Single Commodity Transfer, support levels vary considerably from one product to another. In recent years, support for cereals and oilseeds has been low while support for sugar and milk production, as well as for most other commodities has declined, although it remains considerable for beef and poultry (Table 4.8).

**Table 4.8 Total producer support estimate and single commodity transfer values for selected commodities, 2003-11**

(€ million or % of gross farm receipts for respective products)

	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Producer support estimate</b>									
€ million	98,150	108,924	99,425	98,719	90,827	90,197	85,649	77,317	74,203
PSE as % of gross farm receipts	34	33	30	29	24	22	23	20	18

<sup>23</sup> OECD (2011a).

	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Single commodity transfers</b>	65,915	71,543	54,814	42,585	35,244	30,155	26,267	16,105	12,717
of which									
Common wheat									
€ million	65	1	1	0	(2)	0	2	0	0
SCT as % of gross farm receipts	1	-	-	-	-	-	-	-	-
Maize									
€ million	4,750	6,542	5,567	5,793	9,384	10,253	7,099	8,750	13,503
SCT as % of gross farm receipts	36	11	15	10	23	-	-	-	-
Sugar									
€ million	3,136	2,608	2,866	3,083	3,847	3,545	1,388	1,742	1,327
SCT as % of gross farm receipts	65	65	56	32	49	44	17	3	1
Milk									
€ million	16,460	17,034	11,894	8,389	2,162	1,057	592	712	701
SCT as % of gross farm receipts	45	39	28	21	5	2	2	2	1
Beef and veal									
€ million	15,637	16,914	13,578	12,732	10,774	8,097	8,353	3,079	3,135
SCT as % of gross farm receipts	61	60	55	52	44	31	34	12	11
Pig meat									
€ million	2,810	4,043	1,673	1,588	(532)	2,878	1,103	883	24
SCT as % of gross farm receipts	12	14	6	5	(2)	8	4	3	0
Poultry									
€ million	2,575	4,443	3,358	2,800	4,842	4,640	4,896	3,802	3,101
SCT as % of gross farm receipts	31	43	33	28	37	34	38	29	21

Source: OECD Producer and Consumer Support Estimates database. Viewed at: <http://www.oecd.org/chile/producerandconsumersupportestimatesdatabase.htm> [February 2013].

4.36. As a percentage of gross farm receipts, support has fallen more substantially: from 33% in 2004 to 18% in 2011. The structure of support has also changed: until 2003 over half of the PSE was market prices support, but, as intervention prices were reduced and international prices increased this declined to less than 12% in 2011 (Chart 4.6). Over the same period direct payments based on area planted or animal numbers also declined while decoupled payments increased, which led to the decline in transfers to specific commodities (Table 4.8). However, the OECD calculations of EU support to agriculture remain high in absolute terms with over €74 billion going to support agricultural producers (PSE) and over €86 billion in total support to the sector (TSE). The Commission also noted that, at 18% the EU PSE as a share of gross farm receipts remains close to the OECD average (19%) and the EU TSE as a share of GDP at 0.7% is below the OECD average of 1.0%.<sup>24</sup>

## 4.2 Fisheries

### 4.2.1 Fisheries in the EU

4.37. Gross value added from the fisheries sector was €6,785 million for the EU in 2010 and represented about 0.06% of GVA for all sectors. Its importance varies considerably from one member State to another, being most important to Greece (0.29% of GVA), Estonia (0.26%), and Malta (0.23%). Spain, Italy, and France represented 62% of GVA for fishing for the EU in 2009.<sup>25</sup> Employment in the fisheries and aquaculture sectors also represents a small proportion of total employment with about 140,000 working in fisheries, 31,000 in aquaculture, and another 120,000 in the processing sector.<sup>26</sup>

4.38. FAO fishing data show that total catch in the EU has been declining for many years both in terms of tonnage caught and relative to the rest of the world: in 2000 the EU-27 catch was 6% of

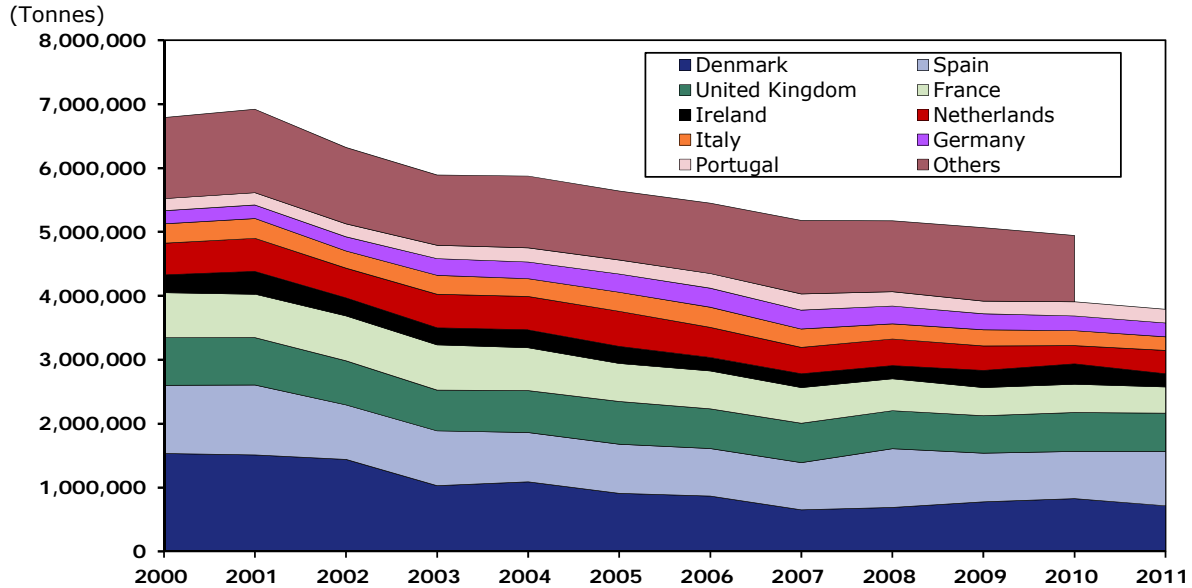
<sup>24</sup> OECD (2012).

<sup>25</sup> Eurostat.

<sup>26</sup> European Commission (2012b).

world catch and in 2010 it had fallen to 3.9%.<sup>27</sup> Eurostat data differ from FAO data but show a similar trend with total catch declining from 6.8 million tonnes in 2000 to 4.9 million tonnes in 2010. However, the trend varies from one member State to another and was slightly upwards in Germany and Portugal (though it varied a lot from one year to another in both cases). Denmark, Spain, the United Kingdom, and France account for over half of the EU's total catch (Chart 4.7).

**Chart 4.7 Total catch in the EU-27**



Note: Data are not available for all member States for 2011.

Source: Eurostat.

4.39. Many different fish species are caught by EU fishers, with the top nine species representing just over half the total weight. The main species caught were European sprat, Atlantic herring, Atlantic mackerel and sandeels (Table 4.9). The structure of catch varies considerably from one member State to another: in Denmark sandeels and sprat make up over half the catch while in Spain the top three species by catch (skipjack tuna, jack and horse mackerels, and European pilchard) are just over one fifth of the total catch.

**Table 4.9 EU-27 total catch for selected species, 2002-09**

('000 tonnes)

	2002	2003	2004	2005	2006	2007	2008	2009
Total catch	6,247	5,822	5,804	5,619	5,430	5,138	5,136	5,049
European sprat	528	546	612	703	512	499	468	543
Atlantic herring	652	673	737	830	748	684	578	531
Atlantic mackerel	443	396	370	283	258	302	279	347
Sandeels	723	307	338	167	294	180	280	339
European pilchards	261	245	257	252	251	235	237	243
Jack and horse mackerel	113	89	126	134	110	114	131	173
Atlantic horse mackerel	167	176	182	177	184	153	173	155
Atlantic cod	163	141	151	125	125	118	119	127
Skipjack tuna	214	208	174	141	133	88	251	114
Chilean jack mackerel	..	..	..	..	34	119	106	111
European anchovy	124	115	144	112	133	109	100	102

.. Not available.

Source: Eurostat.

<sup>27</sup> FAO Fishery Commodities Global Production and Trade online database. Viewed at: <http://www.fao.org/fishery/statistics/global-commodities-production/query/en> [November 2012].

4.40. There were nearly 84,000 fishing vessels in the EU in 2010 with a total gross tonnage of over 1.75 million GT. Over the period 2007-10, the number of vessels in each size category has declined, except for vessels of over 2,000 GT (Table 4.10). Under Council Regulation No. 2371/2002, the total capacity of the fleet has been restricted and new vessels are only permitted to replace old ones of equivalent capacity (in both gross tonnage and engine power).

**Table 4.10 EU fishing fleet, 2007-10**

	Gross tonnage ('000)				Number of vessels			
	2007	2008	2009	2010	2007	2008	2009	2010
Total	1,927	1,869	1,820	1,754	88,998	86,587	84,502	83,796
Size								
0-24.9 GT	258	253	249	247	78,782	76,751	75,092	74,778
25-49.9 GT	119	115	110	106	3,318	3,216	3,075	2,973
50-99.9 GT	210	203	195	188	2,935	2,835	2,731	2,632
100-149.9 GT	171	163	154	145	1,398	1,337	1,260	1,186
150-249.9 GT	250	243	231	218	1,318	1,276	1,219	1,153
250-499.9 GT	291	271	261	247	843	789	757	715
500-999.9 GT	131	121	114	111	194	179	168	163
1,000-1,999.9 GT	180	172	161	157	121	116	108	105
2,000 + GT	317	328	346	336	87	88	92	90

Source: Eurostat.

4.41. The structure of the fishing fleet varies from one member State to another, for example, Greece has the greatest number of vessels (17,144) but is the sixth largest in terms of gross tonnage and fifth largest in terms of total engine power. These differences among member States are the result of many factors, including the type of fishing: Italy is third in the EU-27 in terms of fishing vessels but first in terms of total engine power because about one third of the fleet are trawlers, while only 5% of the Greek fishing fleet are trawlers, and vessels also tend to be smaller.

4.42. Aquaculture production is small relative to the catch sector with total production of 1.3 million tonnes in 2009, valued at about €2,246 million. About half of the total catch were molluscs (mussels, oysters, and clams), but, in value terms, salmon and trout production were more important. The main producers are France, the UK, Italy, Greece, and Spain that together account for over three quarters of the value of production in the EU as a whole.

#### 4.2.2 Trade

4.43. The EU has a trade deficit in fish and fish products with imports of US\$26.7 billion and exports of US\$4.8 billion in 2011.<sup>28</sup> From 2002-08, both exports and imports more than doubled, then fell in 2009, and recovered to new record levels in 2011, with the increase in the total value of exports largely a result of higher prices rather than increased quantities (Tables 4.11 and 4.12). However, trade in fish and fish products represents only about 1.1% of imports and 0.2% of exports.

**Table 4.11 Imports of selected fish products, 2005-11**

HS 2002			2005	2006	2007	2008	2009	2010	2011
	<b>Total imports of fishery products</b>	<b>US\$ million</b>	<b>17,779</b>	<b>20,741</b>	<b>23,198</b>	<b>24,758</b>	<b>22,115</b>	<b>23,710</b>	<b>26,695</b>
030420	Fish fillets, frozen	US\$ million	849	974	1,047	1,078	1,030	1,066	1,075
		'000 tonnes	2,970	3,725	4,346	4,522	4,077	4,185	4,713
030613	Shrimps and prawns, frozen	US\$ million	430	487	492	466	469	476	471
		'000 tonnes	2,460	2,954	2,942	3,086	2,727	3,082	3,381
030212	Salmon	US\$ million	325	342	400	430	473	483	524
		'000 tonnes	1,363	1,754	1,886	2,120	2,360	3,027	3,067
160414	Tunas, skipjack, bonito, prep/psvd	US\$ million	459	474	474	482	466	443	463
		'000 tonnes	1,347	1,486	1,766	2,264	1,958	1,782	2,156

<sup>28</sup> For the purposes of this section of the Review, fish products are defined as HS Headings 020840, 03, 051191, 1504, 1603, 1604, 1605, and 230120.



HS 2002			2005	2006	2007	2008	2009	2010	2011
160520	Shrimps and prawns, prepd/psvd	US\$ million '000 tonnes	109 660	112 685	123 838	125 959	134 988	140 1,061	139 1,241
030410	Fish fillets and other fish meat	US\$ million '000 tonnes	122 804	116 918	128 1,091	117 1,095	122 1,059	124 1,138	124 1,238
030749	Cuttle fish and squid	US\$ million '000 tonnes	301 853	282 860	283 976	265 974	254 772	287 998	262 1,165
030759	Octopus, excl. live/fresh/chilled	US\$ million '000 tonnes	85 420	91 453	93 536	94 634	104 509	84 452	91 730
030269	Fish, nes, fresh/chilled (excl. fillets)	US\$ million '000 tonnes	160 682	155 721	148 772	150 773	157 672	159 588	117 598
030799	Molluscs and invertebrates frozen/dried/etc.	US\$ million '000 tonnes	138 314	200 347	182 320	179 326	134 287	154 445	162 545

Source: UNSD Comtrade.

**Table 4.12 Exports of selected fish products, 2005-11**

HS 2002			2005	2006	2007	2008	2009	2010	2011
	<b>Total exports of fishery products</b>	<b>US\$ million</b>	<b>3,086</b>	<b>3,345</b>	<b>3,910</b>	<b>4,499</b>	<b>3,940</b>	<b>4,484</b>	<b>4,785</b>
030379	Fish, n.e.s., frozen	US\$ million '000 tonnes	326 253	332 301	331 319	333 414	293 380	398 484	278 465
030212	Salmon	US\$ million '000 tonnes	9 55	13 90	17 113	18 116	26 162	32 226	41 331
230120	Flours, meals and pellets	US\$ million '000 tonnes	230 177	196 204	139 182	177 216	235 277	192 296	222 330
030420	Fish fillets, frozen	US\$ million '000 tonnes	32 127	23 159	24 176	27 192	27 178	34 273	31 243
030613	Shrimps and prawns, frozen	US\$ million '000 tonnes	75 210	78 219	85 250	77 281	71 242	69 237	56 225
030374	Mackerel	US\$ million '000 tonnes	124 162	75 131	116 177	94 169	129 212	162 248	118 202
030269	Fish, nes, fresh/chilled (excl. fillets)	US\$ million '000 tonnes	20 161	23 184	29 200	26 233	32 202	26 179	31 199
030343	Skipjack/striped-bellied bonito	US\$ million '000 tonnes	141 109	145 127	126 145	144 216	147 168	133 144	142 185
030331	Halibut	US\$ million '000 tonnes	20 82	18 77	26 108	26 127	24 108	30 143	32 174
150420	Fats and oils and their fractions, of fish, other than liver oils	US\$ million '000 tonnes	80 72	88 89	110 126	79 151	119 125	106 120	98 147

Source: UNSD Comtrade.

#### 4.2.3 Policies

4.44. The EU has exclusive competence for the conservation of marine biological resources under the Common Fisheries Policy and for negotiating agreements with other countries and international organizations. For other fishery matters, competence is shared between the EU and the member States. The member States are responsible for implementation of EU rules and have competence for registration of vessels and other matters related to the jurisdiction of vessels. In matters other than the conservation of marine biological resources, competence is shared between the EU and member States.

4.45. At the EU level, the principal legislation on fisheries is Council Regulation (EC) No. 2371/2002 on the conservation and sustainable exploitation of fishery resources under the Common Fisheries Policy (CFP). The Regulation sets out the legal basis for the CFP and provides for measures covering all areas relating to commercial fishing, including: conservation and management; environmental impact; conditions of access; fleet capacity; control; aquaculture; the common organization of the markets; and international relations. Fisheries policy has changed significantly over the past few years and reform is continuing with increased emphasis on sustainability through long-term management, enforcement of rules, and inputs from stakeholders, including scientific advice.

4.46. The reform of the CFP is continuing with several proposals from the Commission on a ban on discarding catch, maximum sustainable yields, regionalization, and transferable fishing concessions currently before the European Parliament and the Council.<sup>29</sup>

4.47. Overfishing continues to be a major problem facing EU fishing with the majority of commercial fish stocks in EU waters giving cause for concern. In 2007, 29 out of 33 of Europe's most important commercial fish species were over-fished while "decisions on catch levels remain dominated by short-term thinking, and the catching capacity of the European Fleet remains more than twice what is needed to harvest [the EU's] fish stocks sustainably."<sup>30</sup>

4.48. In preparing proposals for the Council and European Parliament, the Commission may consult the Advisory Committee on Fisheries and Aquaculture which was set up in 1971 to represent the main stakeholders in the fisheries sector, including representatives for the catch sector, aquaculture producers, processing and trading enterprises, as well as consumers and environmentalists.<sup>31</sup>

4.49. Over the period November 2004 to April 2009, seven Regional Advisory Councils (RAC) were established Under Regulation No. 2371/2002. Five of the RACs cover geographic marine areas<sup>32</sup>, one is for pelagic stocks, and one is for the high seas/long distance fishing fleet.<sup>33</sup> The RACs comprise the various stakeholders in the fisheries sector with two thirds of members from the catch sector and one third from other interested groups. The RACs are not part of the formal decision-making process under the Common Fisheries Policy but make recommendations on policy. In June 2008, the European Commission reported that the RACs were, in general, functioning well but faced some problems, including with their input into the annual establishment of total annual catches and the allocation of quotas.<sup>34</sup>

#### 4.2.3.1 Total allowable catch

4.50. According to the Commission, its proposals to the Council on TACs and quotas are based on advice from the Scientific, Technical and Economic Committee (which takes into account advice from other sources, including the International Council for the Exploration of the Sea), and input from stakeholders (including the RACs). Based on the Commission's proposals, the Council sets TACs for each species each year (every two years for deep sea species) which are distributed among the member States which in turn allocate quotas to fishing vessels.<sup>35</sup> Control and enforcement are carried out by the member States and include a satellite-based vessel monitoring system (VMS) and traceability systems covering catch from the vessel to the retailer. Sanctions for not complying with quotas or other rules may be applied at both the member State and fishing-vessel level. At the member State level, sanctions for not complying with the CFP include reduced financial aid. Since 1 January 2012, a penalty-point system applies to fishing vessels for serious offences which may result in the withdrawal of fishing permits.<sup>36</sup>

4.51. Although one of the main instruments for controlling fishing is the annual or biennial establishment of TACs and the allocation of quotas, some of the main stocks are under long-term management plans and/or recovery plans that have been developed for several areas and species with several more plans proposed. The long-term plans set out a range of measures to restrict fishing effort, which may include: closed areas; gear restrictions (such as minimum mesh size), as well as monitoring, inspection, and control measures. The current long-term plans include those in Table 4.13.

<sup>29</sup> European Commission online information. Viewed at: [http://ec.europa.eu/fisheries/reform/index\\_en.htm](http://ec.europa.eu/fisheries/reform/index_en.htm) [December 2012].

<sup>30</sup> European Commission (2009), pp. 4-5.

<sup>31</sup> Commission Decision No. 1999/478/EC.

<sup>32</sup> Baltic Sea, Mediterranean Sea, North Sea, north-western waters, and south-western waters.

<sup>33</sup> Council Decision No. 2004/585/EC of 19 July 2004.

<sup>34</sup> European Commission document COM(2008) 364 final, p. 9, 17 June 2008. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0364:FIN:EN:PDF>.

<sup>35</sup> For example, see European Commission online information, "Fishing TACS and Quotas 2012". Viewed at: [http://ec.europa.eu/fisheries/documentation/publications/poster\\_tac2012\\_en.pdf](http://ec.europa.eu/fisheries/documentation/publications/poster_tac2012_en.pdf) [December 2012].

<sup>36</sup> Council Regulation (EC) No. 1224/2009.

Table 4.13 Long-term plans for EU fisheries

Plan			Legislation
English title	Spanish title	French title	
Recovery plan for cod in the North Sea, Kattegat, Skagerrak, the eastern Channel, Irish Sea and West of Scotland	<i>Plan de recuperación del bacalao: Mar del Norte, Kattegat, Skagerrak, Mancha oriental, Mar de Irlanda y oeste de Escocia</i>	<i>Plan de reconstitution des stocks de cabillaud: mer du Nord, Kattegat, Skagerrak, Manche orientale, mer d'Irlande et ouest de l'Écosse</i>	Council Regulations (EC) No. 423/2004 of 26 February, and No. 1342/2008 of 18 December
Recovery plan for Northern hake	<i>Plan de recuperación de la merluza del norte</i>	<i>Plan de reconstitution du stock de merlu du nord</i>	Council Regulation (EC) No. 811/2004 of 21 April
Recovery plan for Southern hake and Norway lobster	<i>Plan de recuperación de la merluza del sur y la cigala</i>	<i>Plan de reconstitution des stocks de merlu australe et de langoustine</i>	Council Regulation (EC) No. 2166/2005 of 20 December
Multi-annual plan for sole, Bay of Biscay	<i>Plan plurianual del lenguado, Golfo de Vizcaya</i>	<i>Plan pluriannuel pour le stock de sole du golfe de Gascogne</i>	Council Regulation (EC) No. 388/2006 of 23 February
Multi-annual plan for sole, Western Channel	<i>Plan plurianual del lenguado, la Mancha occidental</i>	<i>Plan pluriannuel pour le stock de sole de la Manche occidentale</i>	Council Regulation (EC) No. 509/2007 of 7 May
Multi-annual plan for sole and plaice, North Sea	<i>Plan plurianual del lenguado y la solla, Mar del Norte</i>	<i>Plan pluriannuel pour les stocks de sole et de plie de la mer du Nord</i>	Council Regulation (EC) No. 676/2007 of 11 June
Measures for the recovery of eel	<i>Medidas para la recuperación de la anguila europea</i>	<i>Mesures de reconstitution du stock d'anguille</i>	Council Regulation (EC) No. 1100/2007 of 18 September
Multi-annual plan for cod, Baltic	<i>Plan plurianual de recuperación del bacalao del Báltico</i>	<i>Plan pluriannuel pour les stocks de cabillaud de la mer Baltique</i>	Council Regulation (EC) No. 1098/2007 of 18 September
Long-term plan for West of Scotland herring	<i>Plan a largo plazo para el arenque del oeste de Escocia</i>	<i>Plan à long terme pour le stock de hareng présent à l'ouest de l'Écosse</i>	Council Regulation (EC) No. 1300/2008 of 18 December

Source: European Commission, Fisheries. Viewed at: [http://ec.europa.eu/fisheries/cfp/fishing\\_rules/multi\\_annual\\_plans/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/fishing_rules/multi_annual_plans/index_en.htm) [December 2012].

4.52. In addition to long-term plans for EU waters, the EU also implements a number of plans for stocks shared with other countries, such as the 15-year recovery plan for Eastern Bluefin tuna which was adopted by the International Commission for the Conservation of Atlantic Tuna (see section 4.2.3.4).

4.53. Under Regulation (EU) No. 1026/2012 the Commission can adopt measures against a third country which it has identified as allowing non-sustainable fishing of a fishing stock it shares with the EU. Allowing non-sustainable fishing is defined as failure to cooperate in management of the shared stock "in full compliance" with international law, and failing to adopt fishery-management measures or adopting such measures in a manner that could lead the stock to an unsustainable state, and without due regard for other countries and the EU. The measures that may be taken include: imposing quantitative restrictions on imports of fish from the stock, on imports of species associated with the stock, on imports of products made of or containing the stock or species associated with it; and other restrictions. Before taking such measures, the third country would be notified and it then has one month to respond and "remedy the situation".<sup>37</sup>

#### 4.2.3.2 Effort and gear restrictions

4.54. The EU has recognised the need to reduce capacity and fishing effort and member States are required to submit annual reports on the balance between their fleet capacity and fishing opportunities available to them.<sup>38</sup> However, the Commission has noted that these reports are of limited value and that it is "impossible to derive conclusions regarding fishing overcapacity."<sup>39</sup> However, under the measures on capacity management, each addition to capacity must be matched by an equivalent withdrawal in terms of gross tonnage and power, and any withdrawal of

<sup>37</sup> Regulation (EU) No. 1026/2012 of 25 October 2012

<sup>38</sup> Council Regulation (EC) No. 2371/2002, Article 14.

<sup>39</sup> European Commission document COM(2012) 368 final, 6 July 2012. Viewed at: [http://ec.europa.eu/fisheries/cfp/fishing\\_rules/fishing\\_effort/official\\_documents/com\\_2012\\_368\\_en.pdf](http://ec.europa.eu/fisheries/cfp/fishing_rules/fishing_effort/official_documents/com_2012_368_en.pdf).

capacity that receives public aid cannot be replaced. These measures have contributed to the reduction in total capacity of the fishing fleet (Table 4.10).

4.55. The CFP also includes a range of other restrictions to fishing effort and gear that may be used. These include technical measures that may be incorporated into long-term plans, such as minimum landing sizes, minimum mesh sizes, closed areas and seasons, by-catch limits, and permitted fishing gear. The measures and the stocks they apply to are set out in a number of regulations<sup>40</sup>, with several more proposals before the European Parliament and Council, including proposals for regulation:

- on the conservation of fishery through technical measures in the Baltic Sea, the Belts and the Sound<sup>41</sup>;
- establishing specific conditions to fishing for deep-sea stocks in the North-East Atlantic and provisions for fishing in international waters of the North-East Atlantic;<sup>42</sup> and
- concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms.<sup>43</sup>

#### 4.2.3.3 Illegal, unreported, and unregulated (IUU) fishing

4.56. The EU has increased the legal and regulatory framework to address illegal, unreported, and unregulated (IUU) fishing. Under Council Regulation (EC) No. 1005/2008 and the implementing regulations issued in 2010 and 2011, only marine fishery products validated as legal by the flag State or exporting State can be imported into, or exported from the EU while EU operators found to have fished illegally (regardless of location or flag) may be penalised. The Commission has also established a list of vessels that have engaged in IUU fishing<sup>44</sup> and notified several third countries that the Commission considers them as possible candidates for identification as non-cooperating third countries pursuant to the IUU regulation.<sup>45</sup>

#### 4.2.3.4 Regional fisheries management organizations and multilateral agreements

4.57. The EU participates in six tuna regional fishing management organizations (RFMOs) (including the Agreement on the International Dolphin Conservation Programme (AIDCP) which is a sister organisation to IATTC) and 9 non-tuna RFMOs. The EU is also a member of two advisory RFOs: the Western Central Atlantic Fisheries Commission (WECAFC) and the Fisheries Committee for the Eastern Central Atlantic (CECAF) (Table 4.14). The EU is also an active participant in multilateral negotiations on Law of the Sea and Fisheries in global fora, such as the UN and FAO, and other organizations dealing with fishing, such as the OECD. The Communication on the external dimension of the CFP, as endorsed by the European Parliament and the Council, advocates the fight against IUU, reducing overcapacity, reinforcing compliance with management measures adopted by RFMOs and the use of the best scientific evidence available to underpin their decisions.<sup>46</sup>

<sup>40</sup> Regulation (EU) No. 579/2011, Commission Regulation (EU) No. 686/2010, Council Regulation (EC) No. 1288/2009, Commission Regulation (EC) No. 517/2008, Council Regulation (EC) No. 2187/2005, and Council Regulation (EC) No. 850/98 and corrigendum.

<sup>41</sup> European Commission document COM(2012) 591 final, 17 October 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0591:FIN:EN:PDF>.

<sup>42</sup> European Commission document COM(2012) 371 final, 19 July 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0371:FIN:EN:PDF>.

<sup>43</sup> European Commission document COM(2012) 298 final, 21 June 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0298:FIN:EN:PDF>.

<sup>44</sup> Commission Regulations (EU) No. 468/2010 and No. 724/2011.

<sup>45</sup> Commission Decision of 15 November 2012 on notifying third countries that the Commission considers them possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing and Commission Regulation (EU) No. 468/2010 of 28 May, as amended by No. 724/2011 of 25 July.

<sup>46</sup> European Commission document COM(2011) 424 final, 13 July 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0424:FIN:EN:PDF>.

**Table 4.14 EU participation in regional fisheries management organizations**

<b>Regional fisheries management organization</b>	<b>EU status</b>
<b>1. Highly-migratory species</b>	
International Commission for the Conservation of Atlantic Tuna	Contracting party
Indian Ocean Tuna Commission	Member
Western and Central Pacific Fisheries Commission	Member
Inter-American Tropical Tuna Commission	Member
Commission for the Conservation of the Southern Bluefin Tuna	Cooperating non-member
<b>2. Geographical</b>	
North-East Atlantic Fisheries Commission	Contracting party
Northwest Atlantic Fisheries Organization	Contracting party
North Atlantic Salmon Conservation Organization	Member
South-East Atlantic Fisheries Organisation	Contracting party
South Indian Ocean Fisheries Agreement	Contracting party
South Pacific Regional Fisheries Management Organisation	Member
Convention on Conservation of Antarctic Marine Living Resources	Member
General Fisheries Commission for the Mediterranean	Member
Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea	Member (Poland)
<b>3. Advisory organizations</b>	
Western Central Atlantic Fisheries Commission	Member
Fisheries Committee for the Eastern Central Atlantic	Member

Source: European Commission, Fisheries.

#### 4.2.3.5 Bilateral agreements

4.58. Agreements with third countries on fishing are negotiated by the Commission on behalf of the EU. These agreements fall into two categories: the exchange of fishing opportunities for the joint management of shared stocks with Norway, Iceland and the Faroe Islands (also called "Northern Agreements"; and Fisheries Partnership Agreements (FPAs) which give EU vessels the right to fish in other countries' EEZs in return for financial contributions. As of end-December 2012, the EU had 11 protocols in force for FPAs with third countries, each of which included an EU contribution: the total annual contribution from the EU was €26,543,953 of which €7,983,141 was earmarked for fisheries policy development.<sup>47</sup>

#### 4.2.3.6 Support to fisheries

4.59. On 1 January 2007, the European Fisheries Fund (EFF) replaced the Financial Instrument for Fisheries Guidance (FIFG). The EFF has a total budget of €4,305 million for the seven years 2007-13 and covers all sectors of the industry, including: sea and freshwater fishing; aquaculture; processing; and marketing. Funding to each member State is based on its national strategic plan and operational programme.

4.60. The main priorities or axes for EFF funding are:

- adapting the EU fishing fleet to meet resources;
- support for aquaculture, inland fishing, processing, and marketing;
- aid for organizations which represent the collective interest of the sector;
- sustainable development of fisheries-dependent areas; and
- technical assistance to member States to facilitate delivery of aid.<sup>48</sup>

<sup>47</sup> European Commission Fisheries online information. Viewed at: [http://ec.europa.eu/fisheries/cfp/international/agreements/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm) [February 2013].

<sup>48</sup> European Commission (2009), p.31.

4.61. In addition to the EFF, member States may provide state aid to fishing, subject to the general rules on state aid and specific guidelines for the fishery sector.<sup>49</sup> *De minimis* state aid cannot exceed €30,000 per beneficiary over three years and the total amount must be less than 2.5% of the annual value of the member State's fisheries output. Other programmes of state aid must be notified to the Commission which, in principle, must declare that the programme complies with the EU Treaty before it can be implemented. In addition, the annual amount per beneficiary may not exceed €1 million, the total eligible costs per project may not exceed €2 million, the project must be aimed at small and medium-sized enterprises, it has to be in accordance with EFF regulations, and it cannot be given to someone who has been ordered to pay back incompatible state aid until that case has been closed.

4.62. The common organization of the market for fishery and aquaculture products consists of four main elements:

- common market standards for fresh products which include provisions on information to be provided to consumers;
- incentives to fishers to form producer organizations that can take steps to stabilize market fluctuations. To qualify for funding, a producer organization must develop an operational programme that includes measures to adapt catches to market demand, a marketing strategy, a catch plan for fishing or production plan for aquaculture, and an internal penalty system; and
- price support measures which compensate producer organizations should market prices fall below the withdrawal price set for various species. The level of compensation declines with increasing proportion of the producer organizations' output that is withdrawn. The first 4% of production gets 85% of the withdrawal price, the next 4% (6% for pelagic species) gets 55%, and no compensation is provided after that. Aid is also provided for processing and storage of up to 18% of the producer organization's catch so that produce can be sold later, presumably at higher prices.

4.63. According to the OECD, total government financial transfers to the marine capture fisheries sector in the EU were US\$369 million in 2009, about half of which was for general services, one third for direct payments and the remainder was cost-reducing transfers. The total transfer, at 16% compared to the landed value for marine fisheries, was below the average for all OECD countries for which statistics were available. However, data were not available for all OECD countries or for all EU member States.

4.64. Several member States provide fuel tax exemptions, often exemptions from excise duties and/or VAT. The value of these exemptions varies considerably from one State to another: from 22% of the total landed value in Italy and 19% in France and Sweden, to zero in Germany and Portugal.<sup>50</sup> The legal framework covering such exemptions at the EU level is Council Directive 2003/96/EC.

4.65. The EU budget for the fishery sector averaged €678 million in payments per year for 2008-11 and €726 million in 2011. Over half of the €726 million was for the EFF, about one fifth for international fisheries agreements, and most of the remainder went towards the cost of control and enforcement and market interventions (Table 4.15). Not all of this sum was for support to the fishery sector as it also includes contributions to international organizations, technical cooperation, and other headings.

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<sup>49</sup> Treaty on the Functioning of the European Union, Articles 107-109, and Guidelines for the examination of State aid to fisheries and aquaculture 2008/C 844/06.

<sup>50</sup> Martini (2012).



**Table 4.15 EU payments for fisheries, 2008-11**

(€ million)

Budget Chapter		2008	2009	2010	2011
1102.01.01	Intervention	9.5	11.1	10.4	17.2
1102.03.01	Programme for the outermost regions	16.7	13.1	0	16.9
1103.01	International fisheries agreements	166.0	143.2	136.6	155.7
1106	European Fisheries Fund	571.7	290.3	394.8	445.1
	of which				
1106.01-08	Completion of earlier programmes	320.3	114.2	10.7	0.7
1107	Conservation and management	35.4	29.8	27.3	36.6
1108	Control and enforcement	27.4	23.9	31.6	41.8
	Other <sup>a</sup>	7.8	11.3	11.2	12.8

a Budget chapter headings: 1102.01.03, 1103.02, 1103.03, 1103.04, and 1104.01.

Source: European Union Budgets. Viewed at [http://ec.europa.eu/budget/biblio/documents/2013/2013\\_en.cfm](http://ec.europa.eu/budget/biblio/documents/2013/2013_en.cfm) [February 2013].

### 4.3 Services

#### 4.3.1 Financial services

4.66. Financial services in the EU are both a major sector of the EU economy and a major market as, for instance, the EU alone accounts for more than 35% of world gross insurance premiums. As a consequence of the financial crisis, this sector has been the object of intense legislative activity.

##### 4.3.1.1 Market size and structure

4.67. Tables 4.16 to 4.21 list the main indicators of the three sub-segments of financial services: banking, insurance, and securities at EU level. Similar data at EU member-State level can be found in Tables A4.1 to A4.4.

##### 4.3.1.1.1 Banking

**Table 4.16 Consolidated banking indicators, 2010-11**

	2010	2011
<b>Number of credit institutions, by type of unit</b>		
Stand-alone credit institutions	4,350	4,296
Banking groups	418	417
<b>Number of credit institutions, by origin</b>		
Domestic credit institutions	3,730	3,691
Foreign-controlled subsidiaries and branches	1,038	1,022
<b>Total number of credit institutions</b>	<b>4,768</b>	<b>4,713</b>

(€ billion)

Assets of credit institutions	2010	2011
Domestic credit institutions, of which:	34,638.03	35,901.58
Large	25,742.47	26,780.48
Medium-sized	7,822.77	8,039.59
Small	1,072.79	1,081.50
Foreign-controlled subsidiaries and branches	8,234.19	8,916.17
As % of total	19.20	19.90
<b>Total assets</b>	<b>42,872.22</b>	<b>44,817.75</b>

Employment	2010	2011
Euro area	2,132,902	2,107,109
EU	3,078,687	3,045,465

Source: Information provided by the European Commission.

**Table 4.17 Performance indicators, 2010-11**

(%)

Capital adequacy indicators	Domestic banks								Foreign banks	
	All		Large		Medium-sized		Small		2010	2011
	2010	2011	2010	2011	2010	2011	2010	2011		
Overall solvency ratio	13.59	13.53	13.64	13.54	13.03	12.97	16.44	17.13	16.34	16.74
Tier 1 ratio	10.53	10.70	10.63	10.81	10.01	10.10	12.41	12.92	12.79	13.15
Capital buffer	5.59	5.53	5.64	5.54	5.03	4.97	8.44	9.13	8.34	8.74

(%)

Doubtful and non-performing loans and loss provisions	Domestic banks								Foreign banks	
	All		Large		Medium-sized		Small		2010	2011
	2010	2011	2010	2011	2010	2011	2010	2011		
(Gross) Total doubtful and non-performing loans (loans and debt securities) <sup>a</sup>	3.72	3.92	3.65	3.70	3.92	4.65	3.58	2.79	2.41	2.44
(Net) Total doubtful and non-performing loans (loans and debt securities) <sup>b</sup>	24.71	25.70	25.89	25.61	22.64	28.28	20.18	14.13	11.66	9.66
Total loss provisions <sup>c</sup>	49.11	50.38	47.16	48.73	55.00	54.31	39.52	43.88	63.18	68.64

a Per total loans and advances and total debt instruments.

b Per total own funds for solvency purposes.

c Per total (gross) doubtful and non-performing loans.

Source: Information provided by the European Commission.

**4.3.1.1.2 Insurance****Table 4.18 Main economic indicators of the insurance sector (EU level)**

Number of EU insurances companies (2011)	5,500 (top 3 member States): United Kingdom: 1,213; Germany: 580; and France: 434)
Number of employees (2011)	960,000 (top 3 member States: Germany: 216,400; France: 148,000; and United Kingdom: 120,000)
EU total premiums (2011, US\$ billion)	2009: 1,614; 2010: 1,615; 2011: 1,651
EU premiums as percentage of world total premiums (2011, %)	2009: 39.27%; 2010: 37.24%; 2011: 35,91%
EU total gross written premiums (2011, € million)	999,320
EU life gross written premiums (2011, € million)	593,985
EU non-life gross written premiums (2011, € million)	405,338
EU health gross written premiums (2011, € million)	103,641
EU total insurers' investment portfolio (2011, € million)	7,115,002

Source: Insurance Europe.

**Table 4.19 Number of insurance companies, by type, origin, and location of activity, 2011**

	Total
<b>Life enterprises</b>	
1 National enterprises	818
2 Branches of third (non-EU/EEA) countries	6
1 + 2 Total under national supervision	824
3 Branches of EU/EEA countries	119
1 + 2 + 3 Total activity in the country	943
Branches in EU/EEA countries	91
Branches in third (non-EU/EEA) countries	5
<b>Non-life enterprises</b>	0
1 National enterprises	1805
2 Branches of third (non-EU/EEA) countries	34
1 + 2 Total under national supervision	1839

	<b>Total</b>
3 Branches of EU/EEA countries	474
1 + 2 + 3 Total activity in the country	2313
Branches in EU/EEA countries	286
Branches in third (non-EU/EEA) countries	33
<b>Composite enterprises</b>	0
1 National enterprises	247
2 Branches of third (non-EU/EEA) countries	4
1 + 2 Total under national supervision	251
3 Branches of EU/EEA countries	26
1 + 2 + 3 Total activity in the country	277
Branches in EU/EEA countries	32
Branches in third (non-EU/EEA) countries	8
<b>Reinsurance enterprises</b>	0
1 National enterprises	448
2 Branches of third (non-EU/EEA) countries	1
1 + 2 Total under national supervision	449
3 Branches of EU/EEA countries	14
1 + 2 + 3 Total activity in the country	463
Branches in EU/EEA countries	25
Branches in third (non-EU/EEA) countries	10
<b>Total</b>	0
1 National enterprises	3318
2 Branches of third (non-EU/EEA) countries	45
1 + 2 Total under national supervision	3363
3 Branches of EU/EEA countries	633
1 + 2 + 3 Total activity in the country	3996
Branches in EU/EEA countries	434
Branches in third (non-EU/EEA) countries	56

Source: Information provided by the European Commission.

#### 4.3.1.1.3 Securities

**Table 4.20 EU security market capitalization<sup>a</sup>**

(€)

	Quoted shares issued			
	Total	MFIs	Non-MFI corporations	
			Financial corporations other than MFIs	Non-financial corporations
Euro area	4,407,151	395,749	338,207	3,673,194
Non-euro area	2,565,079	114,530	416,048	2,034,502
<b>Total</b>	<b>6,972,230</b>	<b>510,279</b>	<b>754,255</b>	<b>5,707,696</b>

	Securities other than shares issued				
	Total	MFIs (including euro system)	Non-MFI corporations		General government
			Financial corporations other than MFIs	Non-financial corporations	
Euro area	16,827,169	5,514,315	3,264,770	984,318	7,063,765
Non-euro area	5,724,794	2,054,430	941,266	616,076	2,113,023
<b>Total</b>	<b>22,551,963</b>	<b>7,568,745</b>	<b>4,206,036</b>	<b>1,600,394</b>	<b>9,176,788</b>

a Data are from November 2012 for euro-area member States and December 2011 for non-euro-area member States.

Note: MFI: monetary financial institutions.

Source: Information provided by the European Commission.

**Table 4.21 Total assets under management by pension funds, 2010-11**

(€ million)

	2010	2011
Euro area	1,056,010	1,110,130
EU	2,747,912	2,822,256

Source: Information provided by the European Commission.

#### 4.3.1.2 Recent and planned regulatory developments

4.68. To address the weaknesses the financial crisis revealed, the Commission launched an ambitious programme of reforms which implements the decisions taken by the G20 summits since 2008 and aims at tackling more structural issues. The roadmap for this programme was first laid out in the Commission Communication of 4 March 2009, "Driving European Recovery".<sup>51</sup> The roadmap was described in detail in the European Commission Communication of 2 June 2010 entitled "Regulating financial services for sustainable growth".<sup>52</sup> These two documents are the first two initial steps in the EU's strategy to create a renewed and stronger regulatory framework to fight the consequences of the financial crisis.

4.69. Reform of EU financial sector has gone beyond mere crisis management and the roadmaps announced in 2009 and 2010. Additional initiatives were found necessary to address the new challenges that continued to emerge partly as a follow-up of the crisis. In particular one must keep in mind the special role played by the decision to set up a genuine banking union whose role is to break the negative interconnections between banks and public debt management.

4.70. Table 4.22 provides an overview of the legislative instruments adopted since the last review and of those currently under negotiation or still at the planning stage and indicate their paper and/or electronic references.

**Table 4.22 Overview of legislative instruments**

<b>1. Adopted legislation</b>
Capital Requirements Directive 3: new rules on remuneration, prudential requirements and governance of financial institutions. Directive No. 2010/76/EU (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:329:0003:01:EN:HTML">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:329:0003:01:EN:HTML</a> )
Introduction of the European Systemic Risk Board and the European Supervisory Authorities for Banking, Securities and Markets, and Insurance and Pensions. Regulation No. 1092/2010 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0001:0011:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0001:0011:EN:PDF</a> )
Over-the-Counter Derivatives: European Market Infrastructure Regulation (EMIR) No. 648/2012 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012R0648:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012R0648:EN:NOT</a> )
Short selling (Regulation (EU) No. 236/2012 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:086:0001:0024:en:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:086:0001:0024:en:PDF</a> )
Alternative fund industry, including hedge funds. Alternative Investment Funds Managers Directive (AIFMD) No. 2011/61/EU (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:01:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:01:EN:PDF</a> )
Revision of Framework on Credit Rating Agencies reforms (CRA I and II). Regulation No. 1060/2009 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:145:0030:0056:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:145:0030:0056:EN:PDF</a> )
SEPA (Single Euro Payments Area). SEPA End Date Regulation No. 260/2012 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012R0260:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012R0260:EN:NOT</a> )
Recommendation (2011/442/EU) on access to basic bank account (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:190:0087:0091:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:190:0087:0091:EN:PDF</a> )
"Quick fix" Directive Solvency II. Directive No. 2009/138/EC (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0138:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0138:EN:NOT</a> )
<b>2. Proposals currently under negotiation</b>
Deposit Guarantee Schemes. European Commission document COM(2010) 368 final, 12 July 2010 (viewed at: <a href="http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/com_2010_0368_en.pdf">http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/com_2010_0368_en.pdf</a> )

<sup>51</sup> European Commission document COM(2009) 114 final, 4 March 2009. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0114:EN:NOT>.

<sup>52</sup> European Commission document COM(2010) 301 final, 2 June 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0301:FIN:EN:HTML>.

Investors Compensation Schemes. Proposal COM(2010) 371 final, 12 July 2010 (viewed at: [http://ec.europa.eu/internal\\_market/securities/docs/isd/dir-97-9/proposal-modification\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/isd/dir-97-9/proposal-modification_en.pdf))

Omnibus 2. European Commission document COM(2011) 8 final, 19 January 2011 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0008:EN:NOT>)

Mortgage Credit Directive. European Commission document COM(2011) 142 final, 31 March 2011 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0142:EN:NOT>)

Capital Requirements Directive IV. European Commission document COM(2011) 453 final, 20 July 2011 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0453:FIN:EN:PDF>)

Market in Financial Instruments Directive and regulation. European Commission documents COM(2011) 656 final, 20 October 2011 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0656:FIN:EN:PDF>) and COM(2011) 652 final, 20 October 2011 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0652:FIN:EN:PDF>)

Market Abuse Regulation/CSMAD (Criminal sanctions on market abuse). European Commission documents COM(2011) 651 final, 20 October 2011 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0651:FIN:EN:PDF>), including criminal sanctions; and COM(2011) 654 final, 20 October 2011 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0654:FIN:EN:PDF>)

Transparency Directive. European Commission document COM(2011) 683 final, 25 October 2011 (viewed at: [http://ec.europa.eu/internal\\_market/securities/docs/transparency/modifying-proposal/20111025-provisional-proposal\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/transparency/modifying-proposal/20111025-provisional-proposal_en.pdf))

Accounting Directive. European Commission document COM(2011) 684 final, 25 October 2011, to replace accounting directives (viewed at: [http://ec.europa.eu/internal\\_market/accounting/docs/sme\\_accounting/review\\_directives/COM\\_20\\_11\\_684\\_en.pdf](http://ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/COM_20_11_684_en.pdf))

Credit Rating Agencies III. European Commission documents COM(2011)746 final, 15 November 2011 (viewed at: [http://ec.europa.eu/internal\\_market/securities/docs/agencies/COM\\_2011\\_746\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/agencies/COM_2011_746_en.pdf)); and COM(2011) 747 final, 15 November 2011 (viewed at: [http://ec.europa.eu/internal\\_market/securities/docs/agencies/COM\\_2011\\_747\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/agencies/COM_2011_747_en.pdf))

Audit. European Commission documents COM(2011) 778 final, 30 November 2011 (viewed at: [http://ec.europa.eu/internal\\_market/auditing/docs/reform/directive\\_en.pdf](http://ec.europa.eu/internal_market/auditing/docs/reform/directive_en.pdf)); and COM(2011) 779 final, 30 November 2011 (viewed at: [http://ec.europa.eu/internal\\_market/auditing/docs/reform/regulation\\_en.pdf](http://ec.europa.eu/internal_market/auditing/docs/reform/regulation_en.pdf))

Venture Capital. European Commission document COM(2011) 860/2, 7 December 2011 (viewed at: [http://ec.europa.eu/internal\\_market/investment/docs/venture\\_capital/111207-proposal\\_en.pdf](http://ec.europa.eu/internal_market/investment/docs/venture_capital/111207-proposal_en.pdf))

Central Security Depositories Regulation. European Commission document COM(2012) 72 final, 20 October 2012 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0652:FIN:EN:PDF>)

Bank Resolution. European Commission document COM(2012) 280 final, 6 June 2012 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012PC0280:EN:NOT>)

Insurance Mediation Directive. Directive 2012/92/EC (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0092:EN:HTML>)

Packaged Retail Investment Products (PRIIPS). European Commission document COM(2012) 352 final, 3 July 2012 (viewed at: [http://ec.europa.eu/internal\\_market/finances-retail/docs/investment\\_products/20120703-proposal\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/investment_products/20120703-proposal_en.pdf))

UCITS5 (Undertakings for Collective Investment in Transferable Securities)

SSM/EBA (Single Supervisory Mechanism/Amendments to Regulation establishing European Banking Authority) (viewed at: [http://ec.europa.eu/commission\\_2010-2014/barnier/headlines/news/2012/12/20121213\\_en.htm](http://ec.europa.eu/commission_2010-2014/barnier/headlines/news/2012/12/20121213_en.htm))

### 3. Examples of planned proposals

Banking Union related proposals

Shadow banking related legislation

Revision of Anti-Money-Laundering Directive

Bank Accounts Package

Revision of Directive on institutions for occupational retirement provision (IORP Directive)

Non-bank resolution

Financial Conglomerates Directive

Revision of Payment Services Directive (PSD)

Source: Information provided by the European Commission.

4.71. As "directive" is the most frequently used legislative instrument, Table A4.5 indicates the state of play of the transposition of financial services directives already adopted but on a wider timespan (2006-13) than the time elapsed the last review in order to take into account the additional delays given to member States to transpose the directives.

4.72. These legislations and draft legislation have basically five aims around which their description can be organized: (I) creating a banking union, (II) reforming financial institutions and markets to improve stability, (III) reinforcing accountability of the financial system and its user-friendliness, and (IV) instituting a financial transaction tax while (V) not hampering market access.

#### 4.3.1.2.1 Banking union project

4.73. A major point on the Commission's regulatory agenda is the Banking Union project. The Banking Union entails four major elements: a single rulebook, a Single Supervisory Mechanism (SSM), a European deposit guarantee system, and a European resolution framework for banks.

4.74. The SSM would apply to all the euro-area member States and is open to the participation of other member States who wish to embark on a path of deeper integration. Non-euro-area member States may decide to join the SSM by establishing close cooperation between their competent authorities and the ECB. In that case they may, on an equal footing with the euro-area member States, participate in the activities of the newly created Supervisory Board which is in charge of planning and executing the supervisory tasks conferred upon the European Central Bank (ECB).

4.75. The Council of the European Union agreed on a position regarding the SSM Regulation on 13 December 2012.<sup>53</sup> The regulation gives key supervisory tasks and powers to the ECB over all the credit institutions established within the euro area. The ECB carries out its tasks within an SSM composed of ECB and national competent authorities. The ECB shall have particular responsibility for direct supervision of banks having assets of more than EUR 30 billion or constituting at least 20% of their home country's GDP or which have requested or received direct public financial assistance from the European Financial Stability Facility (EFSF) or the European Stability Mechanism. National supervisors will have responsibility for less significant banks, while the ECB may at any time decide to directly supervise one or more credit institution. The governance structure of the ECB will consist of a separate Supervisory Board supported by a steering committee, the ECB Governing Council, and a mediation panel to solve disagreements that may arise between national competent authorities and the Governing Council. The SSM is envisaged to be in place by 1 March 2014. To allow for a smooth transition to the new mechanism, the ECB may extend the deadline.

<sup>53</sup> European Commission online information. Viewed at: [http://ec.europa.eu/commission\\_2010-2014/barnier/headlines/news/2012/12/20121213\\_en.htm](http://ec.europa.eu/commission_2010-2014/barnier/headlines/news/2012/12/20121213_en.htm).



4.76. After the establishment of the Single Supervisory Mechanism, the Commission intends to progress on the remaining pillars, i.e. a Common Deposit Guarantee Scheme for the protection of depositors as well as a single European recovery and resolution framework. Therefore, once the Council and the European Parliament agree on the existing Commission proposals on deposit guarantee<sup>54</sup> and bank recovery and resolution<sup>55</sup>, the Commission envisages proposing a single resolution mechanism to deal efficiently with cross-border bank resolution and to coordinate the application of resolution tools to banks.<sup>56</sup>

#### 4.3.1.2.2 Reforming financial institutions and markets to improve stability

##### 4.3.1.2.2.1 Financial supervision reform

4.77. To cope with deficiencies in cooperation between nationally based supervisors, the EU has established several new European Supervisory Authorities (ESAs) that have been operational since January 2011: the European Banking Authority (EBA)<sup>57</sup>, the European Insurance and Occupational Pensions Authority (EIOPA)<sup>58</sup> and the European Securities and Markets Authority (ESMA).<sup>59</sup>

4.78. These new European authorities work together with Member States' supervisors to foster improved cross-border supervisory cooperation and work towards harmonized rules and their strict and coherent enforcement. More specifically, the ESAs can (i) draw up specific rules for national authorities and financial institutions; (ii) take action in emergency situation (including banning certain products); (iii) mediate and settle disputes between national supervisors; and (iv) ensure the consistent application of EU law.

4.79. In addition, the ESAs have extensive emergency powers to coordinate with national supervisors and impose the necessary actions, in a harmonized way across Europe, if the European Council decides that turbulent market conditions warrant their use (Regulation 1092/2010<sup>60</sup>). Such measures can include bans on short-selling of securities, for example.

4.80. A European Systemic Risk Board (ESRB) was also established to monitor threats to the stability of the financial system as a whole. It provides early warning of system-wide risks that may be building up and, where necessary, issues recommendations to deal with them.

4.81. A general review of the European supervisory architecture is planned for the end-2013/beginning-2014.

##### 4.3.1.2.2.2 Banks and insurance companies

4.82. A key element of the reform programme has also been to increase the capital requirements for banks, investment firms and insurance companies.

4.83. The Capital Requirements Directive and Regulation for banks and investment firms<sup>61</sup> which implements the Basel III framework into EU law, is of utmost importance for the strength and stability of the European banking sector and the creation of a single rule book. The European Commission, Council and Parliament announced on 28 February 2013 that provisional agreement had been reached on this proposal.

<sup>54</sup> European Commission document COM(2010) 368 final, 12 July 2010. Viewed at: [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2010/com\\_2010\\_0638\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/com_2010_0638_en.pdf).

<sup>55</sup> European Commission document COM(2012) 280 final, 6 June 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:520112PC0280:EN:NOT>.

<sup>56</sup> European Commission Press Release IP/12/953, 12 September 2012. Viewed at: [http://europa.eu/rapid/press-release\\_IP-12-953\\_en.htm](http://europa.eu/rapid/press-release_IP-12-953_en.htm).

<sup>57</sup> EBA online information. Viewed at: <http://www.eba.europa.eu/Home.aspx>.

<sup>58</sup> EIOPA online information. Viewed at: <https://eiopa.europa.eu/home/index.html>.

<sup>59</sup> ESMA online information. Viewed at: <http://www.esma.europa.eu/>.

<sup>60</sup> Regulation 1092/2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0001:0011:EN:PDF>.

<sup>61</sup> European Commission document COM(2011) 453 final, 20 July 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0453:FIN:EN:PDF>.

4.84. For insurance companies, the Solvency II Directive (No. 2009/138/EC of 25 November 2009<sup>62</sup>) modernizes the capital rules by introducing risk-based capital requirements. The new system, which should begin to be applied by companies from 2014, introduces risk-based capital requirements and places greater emphasis on risk management. The Commission is awaiting agreement by the legislators on its primary legislative proposal<sup>63</sup> before tabling the implementing measures necessary in order to make the system fully operational.<sup>64</sup>

4.85. In June 2012, the Commission proposed a new comprehensive EU crisis management framework which would provide more comprehensive and effective arrangements to deal with failing banks. Under the draft Bank Resolution Directive<sup>65</sup>, public authorities will be in a position to act in a more coordinated way should banks be in difficulty. The framework provides public authorities with a wide-ranging toolbox of powers, including early intervention to reorganise a bank in difficulty and, if the financial situation of a bank deteriorates beyond repair, the power to ensure that its critical functions can be rescued, with the costs falling upon the bank's owners and creditors, and not on taxpayers. Cross-border cooperation mechanisms would be established, as these were clearly inadequate, as shown in recent years. The measures also foresee robust European financing arrangements, based on contributions from the banking sector itself. The aim is to avoid further recourse to taxpayers' money to rescue failing institutions.

#### 4.3.1.2.2.3 Credit rating agencies and auditors

4.86. With amendments to the Regulation on Credit Rating Agencies (No. 1060/2009<sup>66</sup>) these agencies were made subject to EU-level supervision by the European Securities Markets Authority (mid-2011). The Commission has also proposed rules<sup>67</sup> in order to reduce reliance on ratings in general, mitigate the concentrated market structure for ratings and underline the special responsibility of credit rating agencies regarding sovereign debt ratings. The European Parliament and the Council agreed on this proposal in November 2012<sup>68</sup> that the CRA III Regulation can be formally adopted early-2013.

4.87. The Commission has also introduced legislative proposals affecting auditors<sup>69</sup> to ensure their appropriate supervision and to minimise possible conflicts of interest. The proposal also aims at increasing choice and competition in a market currently dominated by the "big four" multinational auditors (PricewaterhouseCoopers, KPMG, Ernst&Young, Deloitte). Some of the envisaged measures are mandatory rotation of audit firms after six years, mandatory tendering of audit services by public-interest entities, prohibition of audit firms to provide non-audit services to their audit clients.

<sup>62</sup> Directive No. 2009/138/EC. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0138:EN:NOT>.

<sup>63</sup> European Commission document COM(2011) 8 final, 19 January 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0008:EN:NOT>.

<sup>64</sup> The Framework Directive for Solvency II Directive needs to be complemented by level 2 delegated acts. Based on CEIOPS/EIOPA's technical advice, the Commission Services have drafted legal text for those measures. These draft delegated acts cannot, however, be formally adopted by the Commission before the Omnibus II Directive enters into force. This is expected by the end of autumn 2013.

<sup>65</sup> European Commission document COM(2012) 280 final, 6 June 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012PC0280:EN:NOT>.

<sup>66</sup> Regulation No. 1060/2009. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:145:0030:0056:EN:PDF>.

<sup>67</sup> European Commission documents COM(2011) 746 final, 15 November 2011. Viewed at: [http://ec.europa.eu/internal\\_market/securities/docs/agencies/COM\\_2011\\_746\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/agencies/COM_2011_746_en.pdf); and COM(2011) 747 final, 15 November 2011. Viewed at: [http://ec.europa.eu/internal\\_market/securities/docs/agencies/COM\\_2011\\_747\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/agencies/COM_2011_747_en.pdf).

<sup>68</sup> European Commission Press Release MEMO/12/911, 27 November 2012. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-12-911\\_en.htm?locale=FR](http://europa.eu/rapid/press-release_MEMO-12-911_en.htm?locale=FR).

<sup>69</sup> European Commission documents COM(2011) 778 final, 30 November 2011. Viewed at: [http://ec.europa.eu/internal\\_market/auditing/docs/reform/directive\\_en.pdf](http://ec.europa.eu/internal_market/auditing/docs/reform/directive_en.pdf); and COM(2011) 779 final, 30 November 2011 [http://ec.europa.eu/internal\\_market/auditing/docs/reform/regulation\\_en.pdf](http://ec.europa.eu/internal_market/auditing/docs/reform/regulation_en.pdf).

#### 4.3.1.2.2.4 Securities markets and derivatives

4.88. The objective of the European Market Infrastructure Regulation (EMIR) (No. 648/2012<sup>70</sup>), which entered into force in August 2012, is to increase transparency in over-the-counter (OTC) trading of derivatives. The Regulation provides for detailed information on OTC derivative contracts to be reported to trade repositories that centrally collect and maintain the records of OTC derivatives. This information will also be made accessible to supervisory authorities. In addition, certain standardised OTC derivative contracts will have to be cleared through central counterparties (CCPs), thus reducing the risk that a counterpart may not pay. The ESAs are now developing the technical standards required to support the implementation of this new legislation.

4.89. In October 2011, the Commission presented new legislative proposals to revise the rules on markets in financial instruments.<sup>71</sup> The proposals aim at making financial markets more efficient, resilient and transparent, and strengthen investor protection. They extend the existing rules regarding transparency and conduct of business to new and innovative types of trading platforms, thus ensuring safety and creating a level playing field. The new rules will also allow supervisors to ban specific products, services or practices in case of threat to investor protection, financial stability or the orderly functioning of markets.

4.90. To complete the framework of common rules governing securities infrastructures such as trading platforms, trade repositories, and CCPs, in March 2012 the Commission proposed draft legislation regarding Central Securities Depositories (CSDs).<sup>72</sup> This proposal, if and when adopted, would bring more safety and efficiency to securities settlement in Europe. It also seeks to shorten the time it takes for securities settlement and to minimise settlement failures.

#### 4.3.1.2.2.5 Speculative trading practices that may lead to excessive market volatility

4.91. The EU adopted new regulation and supervision on the alternative fund industry, including hedge funds, in the Alternative Investment Funds Managers Directive (AIFMD) No. 2011/61/EU.<sup>73</sup>

4.92. Legislation has also been adopted to increase transparency in short selling with the aim of helping regulators detect risks (Regulation (EU) No. 236/2012).<sup>74</sup> In exceptional circumstances, supervisors will have the power to restrict or even ban short selling. To implement this legislation, in summer 2012 the European Commission set out detailed rules, based on the work of the European Securities and Markets Authority (ESMA), aimed at reducing the risk of settlement failures linked to certain types of short selling, as well as the means by which market participants should disclose significant short positions to the market. The rules also specify the cases in which sovereign credit default swaps are considered covered, and therefore not banned.

4.93. The same legislation also addresses the problems associated with credit default swaps (CDSs) when used speculatively. As a result, the CDS market has become more transparent and naked CDSs on government debt in the EU is, in general, banned as an unhelpful form of speculation.

#### 4.3.1.2.3 Reinforcing the accountability of the financial system and its user friendliness

4.94. The crisis revealed the financial sector's short-term behaviour, characterized in particular by a lack of responsibility and accountability. To counteract this, the EU introduced binding rules on compensation practices for banks and investment firms (for instance in articles 1.4, 1.10.(a), 1.18, 3.2, and Annex I of the Directive 2010/76/EU of the European Parliament and of the Council of 24

<sup>70</sup> Regulation No. 648/2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012R0648:EN:NOT>.

<sup>71</sup> European Commission documents COM (2011) 656 final, 20 October 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0656:FIN:EN:PDF>; and COM(2011) 652 final, 20 October 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0652:FIN:EN:PDF>.

<sup>72</sup> European Commission document COM(2012) 73 final, 7 March 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0073:FIN:EN:PDF>.

<sup>73</sup> Directive No. 2011/61/EU. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:01:EN:PDF>.

<sup>74</sup> Regulation (EU) No. 236/2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:086:0001:0024:en:PDF>.

November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies<sup>75</sup>).

4.95. Further legislative initiatives aim at increasing the responsibility of boards of financial institutions and improving the supervision of senior management in order to establish a sound risk culture at all levels (see Capital RD III Directive No. 2010/76/EU<sup>76</sup> and CRD IV<sup>77</sup>).

4.96. In recent years financial markets have become increasingly global, giving rise to new trading platforms and technologies. This has also led to new possibilities for manipulation of these markets. As part of the initiatives taken to make financial markets more sound and transparent, in October 2011, the European Commission presented legislative proposals on insider dealing and market manipulation.<sup>78</sup> These proposals are currently being discussed by the European Parliament and the Council.

4.97. Sanctions are another instrument to ensure that financial services providers bear full responsibility for their behaviour. But sanctions differ widely across EU member States and are sometimes trifling. The Commission has therefore proposed EU-level measures to achieve greater convergence of national regimes with sufficient deterrents. It also proposed to increase the powers of supervisors to investigate and penalise market abuse by, for instance, setting a minimum amount for fines.

4.98. In July 2012 the Commission presented a legislative package that raises standards and removes loopholes for the benefit of consumers, the "Packaged Retail Investment Products" (PRIIPS).<sup>79</sup> The package entails:

- new, consumer-friendly standards on information about investments. The draft legislation requires that every designer of investment products will have to produce a 'key information document' on the product's main features, as well as the risks and costs associated with investment in that product;
- strengthened standards for the sale of and advice on insurance products, irrespective of whether they are sold directly by an insurance undertaking or indirectly via an intermediary (such as a broker or agent); and
- stricter rules on investment funds marketed and sold to retail investors to ensure their soundness, including by defining precisely the tasks and liabilities of all depositaries acting on behalf of such funds; clear rules on the remuneration of fund managers; and a common approach to how breaches of the legal framework would be sanctioned.

4.99. The Commission has proposed amendments in the Deposit Guarantee Scheme Directive to increase the confidence of bank-account holders by further harmonizing the protection of deposits, ensuring faster pay-outs, and improving the financing of deposit guarantee schemes.<sup>80</sup>

4.100. Similar proposals are tabled to ensure a minimum of €50,000 protection for investors in the event of fraud or failure of an investment company.

<sup>75</sup> Directive 2010/76/EU. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:329:0003:01:en:HTML>

<sup>76</sup> Directive No. 2010/76/EU. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:329:0003:01:EN:HTML>.

<sup>77</sup> European Commission document COM(2011) 453 final, 20 July 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0453:FIN:EN:PDF>.

<sup>78</sup> European Commission documents COM(2011) 651 final (market abuse), 20 October 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0651:FIN:EN:PDF>; and COM(2011) 654 final (including criminal sanctions), 20 October 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0654:FIN:EN:PDF>.

<sup>79</sup> European Commission document COM(2012) 352 final, 3 July 2012. Viewed at: [http://ec.europa.eu/internal\\_market/finances-retail/docs/investment\\_products/20120703-proposal\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/investment_products/20120703-proposal_en.pdf).

<sup>80</sup> European Commission document COM(2010) 368 final, 12 July 2010. Viewed at: [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2010/com\\_2010\\_0368\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/com_2010_0368_en.pdf).

4.101. The Commission has proposed legislation ensuring that residential mortgage lending is tailored to consumers' needs and their ability to repay.<sup>81</sup> The proposed legislation covers all loans which allow the consumer to borrow money in order to buy a home. All lenders and intermediaries must act in an honest and professional manner when offering and granting a mortgage loan and consumers should provide lenders with all necessary information to make a responsible decision. The proposal would also ensure that all mortgage lenders and intermediaries are appropriately regulated and supervised.

4.102. In the area of payments, the SEPA End-Date Regulation (No. 260/2012<sup>82</sup>) foresees pan-European SEPA credit transfers and direct debits across the euro area replacing domestic payment schemes as of February 2014. Customers and banks now have the opportunity to fully migrate to these pan-European core-payment instruments, avoiding the cost of operating dual payment systems and being able to reap the benefits of SEPA.

#### 4.3.1.2.4 Instituting a financial transaction tax

4.103. Table 4.23 describes the draft financial transaction tax that 11 member States are now negotiating. At EU level under the specific legal framework of "enhanced cooperation". Enhanced cooperation is a procedure used when a group of at least nine member States decide to move ahead with an initiative proposed by the Commission, once it proves impossible to reach unanimous agreement within a reasonable period. It is relevant only to policy areas which require unanimity, and its aim is to overcome a situation whereby certain member States are prevented from advancing with a common approach due to the reluctance and non-agreement of others. The conditions and procedures for enhanced cooperation are set out in Article 20 of the Treaty on European Union (TEU) and Articles 326 to 334 of the Treaty on the Functioning of the European Union (TFEU).

**Table 4.23 Main elements of the planned financial transaction tax**

##### Chronology and references

- 28 September 2011: initial proposal for a Council directive on a common system of financial transaction tax (FTT) and amending directive 2008/7/EC. European Commission document COM(2011) 594 final, 28 September 2011 (viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/ec\\_eu/taxation/other\\_taxes/financial\\_sector/com\(2011\)594\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/ec_eu/taxation/other_taxes/financial_sector/com(2011)594_en.pdf)).
- June-July 2012: no unanimous support in the ECOFIN Council for a common system of FTT in the Union as a whole as proposed by the Commission in the foreseeable future.
- 28 September 2012: reception by the Commission of requests from 11 member States (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovenia, Slovak Republic, and Spain), representing 2/3 of EU GDP, asking it to submit a proposal for a Council decision to authorize an enhanced cooperation<sup>a</sup> based on the original Commission FTT proposal.
- 23 October 2012: proposal by the Commission to the Council to authorize enhanced cooperation in the area of FTT.
- 12 December 2012: consent by the European Parliament to the latter proposal.
- 22 January 2013: adoption by the Council of a decision authorizing 11 member States to go ahead with enhanced cooperation on a common system of FTT (23 member States voting "yes" and 4 abstaining). Decision 2013/52/EU, 25 January 2013 (viewed at: [http://eur-lex.europa.eu/Result.do?T1=V4&T2=2013&T3=52&RechType=RECH\\_naturel&Submit=Search](http://eur-lex.europa.eu/Result.do?T1=V4&T2=2013&T3=52&RechType=RECH_naturel&Submit=Search)).
- 14 February 2013: adoption by the European Commission of a proposal for a Council directive implementing enhanced cooperation in the area of FTT. European Commission document COM(2013) 71 final, 14 February 2013 (viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/com\\_2013\\_71\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/com_2013_71_en.pdf)).

<sup>81</sup> Consumer Mortgage Directive (European Commission document COM(2011) 142, 31 March 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0142:EN:NOT>.

<sup>82</sup> Regulation No. 260/2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012R0260:EN:NOT>.

**Objectives of the FTT**

- To harmonise legislation concerning indirect taxation to tackle fragmentation of the Single Market that an uncoordinated patchwork of national financial transaction taxes would create.
- To ensure that the financial sector makes a fair and substantial contribution to public finances in covering the costs of the crisis, and to create a level playing field with other sectors from a taxation point of view.
- To create appropriate disincentives for financial transactions which do not contribute to the efficiency of financial markets or to the real economy.

**Scope of the FTT**

- The base of the tax is very wide, covering transactions carried out by financial institutions on all financial instruments and markets, once there is an established economic link to the FTT zone.
- The rates are low, at 0.1% for shares and bonds, units of collective investment funds, money-market instruments, repurchase agreements and securities-lending agreements, and 0.01% for derivative products. These are proposed minimum rates, and participating member States would be free to apply higher rates if they wanted to. The tax would have to be paid by each financial institution involved in the transaction.
- Day-to-day financial activities of ordinary citizens and businesses (e.g. insurance contracts, mortgage and business lending, credit card transactions, payment services, deposits, spot currency transactions etc.) are excluded from the FTT, in order to protect the real economy.
- The raising of capital (i.e. primary issuance of shares and bonds, units of collective investment funds) and certain restructuring operations will not be taxed. Also excluded from the scope of the FTT are financial transactions with the ECB and national central banks, the EFSF and ESM.
- The "residence principle" remains a core element to safeguard against the relocation of financial transactions. Under the residence principle, who is party to the transaction is what counts, not where it takes place. If a financial institution involved in the transaction is established in the FTT zone, or is acting on behalf of a party established in this zone, then the transaction will be taxed, regardless of where it takes place in the world.

To further prevent avoidance of the tax, the Commission has added to this proposal the "issuance principle". This means that a transaction will also be taxed, whenever and wherever it takes place, if it involves financial instruments issued by a company or entity whose registered seat is in one of the participating member States.

**Expected benefits**

A common FTT will ensure a fairer contribution to public finances from the financial sector, which is currently under-taxed by about €18 billion a year in the EU, and which has benefited greatly from rescue operations pre-financed by tax payers.

It will reduce fragmentation of the Single Market, by having a single system for taxing financial transactions which covers 11 member States.

Importantly, those that participate in enhanced cooperation on the FTT will also have a significant new source of revenue without a placing further burden on the ordinary citizen.

**Expected revenue and planned use of this revenue**

The proposed FTT applied under enhanced cooperation is expected to generate €30-35 billion a year, corresponding to 1% of the participating member States' tax revenues.

The Commission has proposed that a portion of the revenue could be used as an own resource for the EU budget, resulting in a corresponding reduction of the national GNI contributions of participating member States. The money for the national budgets could be used to help consolidate public finances, invest in growth-promoting activity, or meet development-aid commitments. Ultimately, it will be for participating member States to decide how the revenues of the FTT should be used.

**Assessment of tax avoidance and relocation risks**

The "residence principle" ensures that if any party to the transaction is established in the FTT zone, the transaction is taxed, regardless of where in the world it takes place. This means that financial operators would only be able to avoid the FTT if they were prepared to relocate, abandon all their clients in the 11 member States, and refrain from any interaction with financial institutions established in the participating member States. This makes relocation a very unlikely response, particularly considering the low rate of the proposed FTT and the fact that the participating member States comprise two thirds of EU GDP.

In addition, the proposal further reinforces the safeguards against relocation. Under the issuance principle, financial products issued in the 11 member States will be taxed when traded, even if those trading them are not established within the FTT zone. Again, this removes any incentive to relocate in order to avoid the tax.



**Planned implementation calendar**

The proposal foresees the FTT for the 11 member States taking effect on 1 January 2014. Obviously, it depends on the Council reaching agreement on the proposal in time to respect this proposed implementation date. The European Parliament, the European Economic and Social Committee and national parliaments will also be consulted, and national transposition would then be needed.

- a The conditions and procedures for enhanced cooperation are set out in Article 20 of the Treaty on European Union (TEU) and Articles 326 to 334 of the Treaty on the Functioning of the European Union (TFEU).

Source: Information provided by the European Commission.

**4.3.1.2.5 Third-country regimes**

4.104. The new European legislation on financial services does not introduce new market access or national-treatment limitations. It establishes a new and comprehensive regulatory framework and extends regulation over new markets, entities, and activities.

4.105. Regarding cross-border supply of services, most of the recent legislation adopted by the EU includes third-country regimes under which foreign-based operators are allowed to pursue their activities linked with European financial markets, provided that certain prudential requirements are met, in particular that the regulatory system under which they operate locally is considered of equivalent quality with that of the EU.

4.106. This system thus guarantees that, for instance, foreign credit-rating agencies and foreign auditors can provide their services to European consumers from abroad if their national supervisory and regulatory systems have been granted equivalence by the European Commission on the basis of factual findings by European independent supervisory agencies.

4.107. Table 4.24 gives an overview of the equivalence decisions adopted under the EU financial services legislations.

**Table 4.24 State of play of equivalence decisions**

Legal instruments	Detailed status
<b>Prospectus Directive</b> Directive 2003/71/EC of 4 November 2003 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0064:0089:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0064:0089:EN:PDF</a> )	No equivalence decisions have been taken by the Commission so far.
<b>Transparency Directive</b> Directive 2004/109/EC of 15 December 2004 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:390:0038:0057:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:390:0038:0057:EN:PDF</a> )	Commission Decision 2008/961, as amended by Decision 2012/194, recognizes as equivalent to the IFRS the generally accepted accounting principles of China; Japan; the Republic of Korea; and the United States.
<b>Anti-Money Laundering Directive/Counter-Financing of Terrorism</b> Directive 2005/60/EC of 26 October 2005 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF</a> )	EU member States agreed a list of equivalent third countries, which are Australia; Brazil; Canada; Hong Kong, China; India; Japan; Mexico; Republic of Korea; Singapore; Switzerland; South Africa; and the United States. <sup>a</sup>
<b>Alternative Investment Fund Managers Directive (AIFMD)</b> Directive 2011/61/EU of 8 June 2011 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF</a> )	AIFMD will apply as of 22 July 2013. No equivalence assessment process is under way.
<b>Regulation on Credit Rating Agencies (CRA Regulation)</b> Regulation (EC) No. 1060/2009 of 16 September 2009 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0001:0031:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0001:0031:EN:PDF</a> )	The Commission has adopted equivalence decisions on Australia, Canada, Japan, and the United States. <sup>b</sup> Furthermore the Commission asked ESMA to provide technical advice by end of May 2013 with a view to declaring Argentina; Brazil; Hong Kong, China; Mexico; and Singapore equivalent.

Legal instruments	Detailed status
<p><b>Statutory Audit Directive</b>            Directive 2006/43/EC of 17 May 2006            (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:157:0087:0107:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:157:0087:0107:EN:PDF</a>)</p>	<p>Commission Decision 2008/627/EC of 29 July 2008 concerning a transitional period for audit activities of certain third-country auditors and audit entities allowed the auditors and audit entities from 34 third countries to continue their activities in the EU in relation to audit reports concerning the annual or consolidated accounts for financial years starting during the period from 29 June 2008 to 1 July 2010. These third countries/territories were: Argentina; Australia; Bahamas; Bermuda; Brazil; Canada; Cayman Islands; Chile; China; Chinese Taipei; Croatia; Guernsey; Jersey; Isle of Man; Hong Kong, China; India; Indonesia; Israel; Japan; Kazakhstan; Korea; Malaysia; Mauritius; Mexico; Morocco; New Zealand; Pakistan; Russia; Singapore; South Africa; Switzerland; Thailand; Turkey; Ukraine; United Arab Emirates; and United States. Commission Decision 2011/30/EU of 19 January 2011 concerning the equivalence of certain third-country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third-country auditors and audit entities in the EU:</p> <p>(i) declared equivalent 10 third countries: Australia; Canada; China; Croatia; Japan; Korea; Singapore; South Africa; Switzerland; and United States. The equivalence decision for the United States was limited in time and will cease to apply on 31 July 2013 in order to review and assess the progress made towards reaching mutual reliance; and (ii) extended the transitional period to the following countries/territories: Abu Dhabi; Bermuda; Brazil; Cayman Islands; Chinese Taipei; Dubai; Egypt; Guernsey; Hong Kong, China; India; Indonesia; Isle of Man; Israel; Jersey; Malaysia; Mauritius; New Zealand; Russia; Thailand; and Turkey.</p>
<p><b>Short Selling Regulation</b>            Regulation (EU) No. 236/2012 of 14 March 2012            (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:086:0001:0024:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:086:0001:0024:EN:PDF</a>)</p>	<p>No equivalence assessment process is currently under way.</p>
<p><b>Regulation on OTC derivatives, central counterparties and trade repositories (EMiR)</b>            Regulation (EU) No. 648/2012 of 4 July 2012            (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF</a>)</p>	<p>After ESMA provides its technical analysis, the Commission will proceed with an assessment of whether to grant equivalence.</p>
<p><b>Solvency II Directive for insurance and reinsurance undertakings</b>            Directive 2009/138/EC of 25 November 2009            (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:335:0001:0155:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:335:0001:0155:EN:PDF</a>)</p>	<p>In October 2010, the Commission asked EIOPA to assess the equivalence of Bermuda, Japan, and Switzerland. EIOPA's advice concluded that each of the third countries was equivalent, but with certain caveats. The Commission has asked EIOPA to revisit its assessment once the delegated acts are adopted in order to verify whether any amendments to the criteria or any changes made to the Bermudan, Japanese, and Swiss solvency and prudential regimes affect the conclusions reached in the reports. Once this review is complete, the Commission will take its decisions on the equivalence of those third countries.</p>

Legal instruments	Detailed status
<b>UCITS Directive</b> Directive 2001/108/EC of 21 January 2002 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:041:0035:0042:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:041:0035:0042:EN:PDF</a> )	Equivalence decisions are taken by the competent authorities of the UCITS home member State.
<b>Financial Conglomerates Directive</b> Directive 2002/87/EC of 16 December 2002 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:035:0001:0027:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:035:0001:0027:EN:PDF</a> )	Individual equivalence decisions are taken by the competent national authorities.
<b>Capital Requirements Directive</b> Directive 2006/48/EC of 14 June 2006 (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:177:0001:0200:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:177:0001:0200:EN:PDF</a> )	Individual equivalence decisions are taken by the competent national authorities.
<b>Proposed legal instruments</b>	The Commission's proposals on a Directive on markets in financial instruments (MiFID II) <sup>c</sup> , a Regulation on markets in financial instruments (MiFIR) <sup>d</sup> , and a Regulation on improving securities settlement in the European Union and on central securities depositories (CSDs Regulation) <sup>e</sup> , contain equivalence provisions. The proposals are currently under negotiation in the European Parliament and the Council.

- a For further information, see European Commission online information. Viewed at: [http://ec.europa.eu/internal\\_market/company/docs/financial-crime/3rd-country-equivalence-list\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/financial-crime/3rd-country-equivalence-list_en.pdf).
- b For Australia and the United States, see Commission Implementing Decision of 5 October 2012, *Official Journal* L 274, 12 October 2012, pp. 30 and 32. For Canada, see Commission Implementing Decision of 5 October 2012, *Official Journal* L 278, 9 October 2012, p.17. For Japan, see Commission Decision of 28 September 2010, *Official Journal* L 254, 29 September 2010, p. 46.
- c Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast). European Commission document COM(2011) 656 final, 20 October 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0656:FIN:EN:PDF>.
- d Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories. European Commission document COM(2011) 652 final, 20 October 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0652:FIN:EN:PDF>.
- e Proposal for a Regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC. European Commission document COM(2012) 73 final, 7 March 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0073:FIN:EN:PDF>.

Source: Information provided by the European Commission.

4.108. Concerning commercial presence and in particular subsidiaries, European regulations continue to apply to all financial operators regardless of their origin. Foreign-owned subsidiaries can benefit from a "European passport" allowing them to pursue their activities in the whole European internal market.

4.109. Regarding branches, several EU financial regulations give competence to member States to authorize and supervise activities of branches in their territory, provided they respect minimum standards in such authorization and supervision. The activity of the branch is limited to the territory of the member State which authorises the third-country company to establish a branch. For example, the capital requirement directives and the regulation setting up a Single Supervisory Mechanism give member States (and national supervisors) competence to authorize and supervise branches of foreign banks wanting to establish themselves in their territory.

4.110. The same authorization system will be applied to branches in the insurance and reinsurance sectors under the Solvency II regime. Indeed, minimum harmonized requirements on branches belonging to insurance or reinsurance undertakings with head offices situated outside the EU will also be introduced by Solvency II. Member States are required to make such branches subject to an authorization, and Solvency II sets out the conditions for granting authorization.

4.111. Furthermore, in the Commission's MiFID II proposal, the "European passport" referred to above can be granted to foreign companies' branches.

#### 4.3.1.2.6 Planned next steps of financial services reform

4.112. The planned next steps of the reform touch on five different points:

- **Completing the banking union:** alongside the proposal on Single Supervisory Mechanism, the Commission will launch initiatives to create a complete banking union, including a single EU deposit guarantee scheme and a centralized EU approach to deal with bank failure and resolution.
- **Structural reform in the banking sector:** the Commission is looking at the recommendations of the high-level group led by Erkki Liikanen and will decide on how best to follow them up. The Liikanen group was mandated to assess whether further reforms directly targeted at the structure of individual banks themselves and at the banking system as a whole may further enhance the stability and efficiency of the banking sector and its ability to serve and protect the needs of citizens and better support the EU economy and the single market.
- **Shadow banking:** in early 2013, the Commission will present a roadmap on shadow banking in the EU focusing on three priorities: first, the strengthening of transparency and data collection and monitoring; second, money market funds, and, third, strengthening policies in the field of repo and securities lending transactions. The Commission also plans to bring forward draft legislation on securities law with a view to clarifying who owns what. This will help further to improve transparency, safety and investor rights in the single market.
- **A crisis management framework for other important financial institutions:** together with its international partners, the Commission services are reflecting on what arrangements might be needed to prevent the failure of systemically important financial institutions, apart from banks, from compromising financial stability.
- **Payments:** the Commission plans an integrated European market for innovative payment methods. A Green Paper on card, internet and mobile payments, the fastest-growing retail payment methods in Europe, was published in January 2012.<sup>83</sup> The Commission plans to adopt legislative proposals addressing the obstacles for market integration in these areas in the first half of 2013. The Commission is also looking at issues such as the right of access to a basic payment account for all EU citizens and residents, and measures to improve the transparency and comparison of bank fees and to facilitate bank account switching within the EU.

#### 4.3.2 Environmental services

4.113. Environmental services constitute an important economic sector for the EU as their two main subsectors (water collection treatment and supply on the one hand, and sewerage, waste management, and remediation on the other hand<sup>84</sup>) employed 1,037,000 persons<sup>85</sup> in 2007 and accounted for a gross value added of €100.5 billion (€29.6 billion for water, €69.8 billion for the remainder), i.e. an approximate turnover of €250 billion.<sup>86</sup>

4.114. Table 4.25 gives an overview of the economic importance of the environmental services subsectors in the EU. Table A4.6 provides a breakdown by member States of employment figures for the sector.

<sup>83</sup> European Commission online information. Viewed at: [http://ec.europa.eu/internal\\_market/consultations/2012/card\\_internet\\_mobile\\_payments\\_en.htm](http://ec.europa.eu/internal_market/consultations/2012/card_internet_mobile_payments_en.htm).

<sup>84</sup> These categories corresponds respectively to items E-36 and E37-39 of the NACE rev2 EU statistical nomenclature.

<sup>85</sup> These figures do not include Spain, Sweden, and the United Kingdom for which no data were available.

<sup>86</sup> The ratio output/value added of these two sectors is estimated at approximately 2.5.

**Table 4.25 Importance of environmental protection in the EU economy, 2010-11**

		2010	2011
Employment of water collection treatment and supply	('000)	255,700	..
Employment of sewerage, waste management, and remediation activities	('000)	781,300	..
Total output	€ million	23,046,636	24,111,715
Gross domestic product at market prices (GDP)	€ million	12,279,915	12,642,729
Output of water collection, treatment, and supply	% of total output	0.27	0.27
Output of sewerage, waste management, and remediation activities	% of total output	0.91	0.90
Gross value added of water collection, treatment, and supply	% of GDP	0.24	0.24
Gross value added of sewerage, waste management, and remediation activities	% of GDP	0.63	0.64

.. Not available.

Source: Information provided by the European Commission.

4.115. There is no detailed split by member State of the environmental services market but Table 4.26 details, by member State, the size of the environmental market, including both environmental equipment and environmental services.

**Table 4.26 European and global environmental market, by EU member State, 2010-12**

(US\$ billion)

Country	2010	2011	2012
Austria	6.3	6.5	6.6
Belgium	5.4	5.5	5.6
Bulgaria	0.2	0.3	0.3
Czech Republic	1.3	1.3	1.4
Denmark	4.6	4.7	4.7
Estonia	0.1	0.1	0.1
Finland	4.0	4.1	4.2
France	35.3	35.8	36.0
Germany	74.1	76.3	77.2
Greece	2.6	2.5	2.4
Hungary	1.0	1.0	1.0
Ireland	3.0	3.0	3.1
Italy	22.2	22.3	22.4
Latvia	0.1	0.2	0.2
Lithuania	0.3	0.3	0.3
Luxembourg	0.6	0.6	0.6
Netherlands	14.2	14.4	14.6
Poland	5.0	5.2	5.4
Portugal	2.4	2.3	2.3
Romania	0.7	0.8	0.8
Slovakia	0.6	0.6	0.6
Slovenia	0.4	0.4	0.4
Spain	17.1	17.3	17.0
Sweden	7.1	7.4	7.7
United Kingdom	39.5	39.8	40.1
<b>Total EU (save Malta and Cyprus)</b>	<b>248.1</b>	<b>252.7</b>	<b>259.4</b>
<b>Total world market</b>	<b>834.0</b>	<b>866.0</b>	<b>897.0</b>
<b>Total EU as % of world market</b>	<b>29.7</b>	<b>29.2</b>	<b>28.4</b>

Source: Environmental Business International Inc.

4.116. At a European-wide level, however, detailed statistics of the various subsegments of environmental services are available and appear in Table 4.27, which shows that, depending of the

subsector concerned, the EU accounts for approximately 20% to 25% of the global environmental services market.

**Table 4.27 European and global environment market, by segment, 2008 and 2010**

(US\$ billion)

	2008			2010		
	Total Europe <sup>a</sup>	Total world	Europe as % of world market	Total Europe <sup>a</sup>	Total world	Europe as % of world market
<b>Equipment</b>						
Water equipment and chemicals	20.5	67.6	30.3	19.5	68.9	28.3
Air pollution control	16.5	52.4	31.5	14.9	49.4	30.2
Instruments and information systems	2.4	9.3	25.8	2.2	9.0	24.5
Waste management equipment	11.9	37	32.3	10.8	32.6	33.3
Process and prevention technology	0.8	4.4	17.8	0.7	4.0	17.7
<b>Services</b>						
Solid waste management	37.7	141.6	26.6	38.9	140.7	27.7
Hazardous waste management	6.8	22.9	29.6	6.2	22.1	27.9
Consulting and engineering	19.2	52.1	36.8	18.8	52.0	36.2
Remediation/industrial services	10.6	41.3	25.7	10.0	39.0	25.8
Analytical services	1.5	5.2	28.1	1.4	5.2	27.4
Water treatment works	36.8	109.5	33.6	36.9	117.1	31.5
Water utilities	39.5	124.6	31.7	39.4	131.2	30.0
Resource recovery	23.8	50.9	46.8	22.0	48.2	45.7
Clean energy systems and power	33.8	94.9	35.6	42.7	114.7	37.3
<b>Total services</b>	<b>209.7</b>	<b>643</b>	<b>32.6</b>	<b>216.5</b>	<b>670.2</b>	<b>32.3</b>

a Europe = EU-27 (save Malta and Cyprus) + Switzerland, Iceland, Bosnia, Croatia, and Russia.

Source: Environmental Business International Inc.

4.117. Tables 4.28 to 4.30 below detail the main economic indicators and the existing and planned regulatory regimes of the various environmental services.

**Table 4.28 Market structure and regulatory framework of water services**

<b>Water utilities and waste water treatment services</b>	
EU share of the global market (2010)	Water utilities: 30% (source EBI). Water treatment works: 31.5% (source EBI)
Market size, number of firms, and employees (2010)	Water utilities: US\$39.4 billion of revenues (source EBI); €50 billion (source: EUROSTAT). Water treatment works: US\$36.9 billion of revenues (source EBI); 3.7 million employees (collection, purification, and distribution of water only) EU: 33% of Europeans served by economic operators (according to International Federation). France: 72% of the population served through service concessions; 2,536 concessions underway in 2007 with 700 concessions re-opened every year. Spain: 36% of the population served under a concession contract, 16% served through IPPPs, some under-concession contracts. Germany: 6% of the population served by private companies, 39% by IPPPs. Italy: growing 20% of the population served by private or mixed entities of private water operators (Aquafed)
Main private companies	Suez (France), Veolia Environnement (France), Aguas de Barcelona (Spain), Thames Water (UK), SAUR (France), FCC/Aqualia (Spain), Proactiva (France/Spain), Sacyr Vallehermoso/Valoriza/AGS (Spain), ACS-Dragados (Spain), Gelsenwasser (Germany), RWE (Germany), Energie AG (Austria), EVN (Austria), Berlinwasser (Germany), ACEA (Italy)
Level of regulation	EU; member States (for member States' regulations, see Table A4.7 on the modalities of private sector participation in the management of water utilities)



Water utilities and waste water treatment services	
Main "qualitative" regulations	<p>Directive 2000/60/EC establishing a framework for Community action in the field of water policy so-called "Water framework directive" (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/site/fr/consleg/2000/L/02000L0060-20011216-fr.pdf">http://eur-lex.europa.eu/LexUriServ/site/fr/consleg/2000/L/02000L0060-20011216-fr.pdf</a>)</p> <p>Council Directive 98/83/EC on the quality of water intended for human consumption (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0083:en:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0083:en:NOT</a>)</p> <p>Directive 91/271/EEC concerning urban waste-water treatment (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0271:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0271:EN:NOT</a>) amended by Directive 98/15/EC (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0015:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0015:EN:NOT</a>)</p> <p>Water Framework Directive 2000/60 expands the scope of water protection to all waters and sets clear objectives that a "good status" must be achieved for all European waters by 2015 and that water use must be sustainable throughout Europe. It does not specifically address water utilities and waste water treatment services but contains one article (Article 9) on water services in a much broader sense: irrigation, self-abstraction, flood protection, navigation, and drinking water supply and waste water treatment</p>
Main "economic" regulations	<p>Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT</a>)</p> <p>Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:en:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:en:PDF</a>)</p> <p>For more detailed rules applicable to the various type of contracts, see Table A4.8 on the rules of public procurement directives applicable to public contracts and concessions</p>
Ongoing EU level regulatory developments	<p>Concessions are partnerships between the public sector and mostly private companies, where the latter exclusively operate, maintain and carry out the development of infrastructure (ports, water distribution, parking garages, toll roads) or provide services of general economic interest (energy, water and waste disposal, for example). Concessions are the most common form of public private partnership (PPP). Unlike public contracts, which are regulated by Directives 2004/17/EC and 2004/18/EC and public works concessions, which are partially covered in Directive 2004/18/EC, the award of service concessions is not subject to any clear and unambiguous provisions, being guided only by the general principles of transparency and equal treatment of the Treaty on the Functioning of the EU. This loophole gives rise to potentially serious distortions of the internal market such as direct awards of contracts without any competition (with associated risks of national favouritism, fraud and corruption) and generates considerable inefficiencies.</p> <p>The Commission has, therefore, proposed on 20 December 2011 a directive on the award of concessions contracts (viewed at: <a href="http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/COM2011_897_en.pdf">http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/COM2011_897_en.pdf</a>) as well as a revision of the public procurement directives (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:REV1:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:REV1:EN:PDF</a>, point 1.4 proposal No. 17). The main provisions of the concession proposal, which are still under discussion, are:</p> <ul style="list-style-type: none"> <li>– a clearer and more precise definition of a concession (building on the Court's case law);</li> <li>– coverage of award of works and services concessions both in the classic sector (all other sectors not covered by utilities) and in the utilities sector (Directives 2004/18/EC and 2004/17/EC, respectively);</li> <li>– compulsory publication of concessions in the <i>Official Journal of the EU</i>, when their value is equal to or greater than €5,000,000;</li> </ul>

Water utilities and waste water treatment services	
	<ul style="list-style-type: none"> <li>– pragmatic solutions for dealing with changes to concessions contracts during their term, notably when justified by unforeseen circumstances;</li> <li>– establishment of a minimum deadline of 52 days for the submission of applications for the concession;</li> <li>– establishment of certain obligations with respect to the selection and award criteria to be applied by the contracting authorities and contracting entities when awarding concessions. These rules aim at ensuring that such criteria are published in advance, are objective and not discriminatory. In general, they are less rigid than similar provisions currently applicable to public contracts;</li> <li>– no specific award procedures but instead definition of certain general guarantees aimed at ensuring transparency and equal treatment with particular reference to negotiation; and</li> <li>– application of the Remedies Directives (Directives 89/665/EEC and 92/13/EC, as amended by Directive 2007/66/EC) to all concessions above the threshold.</li> </ul> <p>For a detailed and comparative overview of existing legislation on concession at member States' level, see EU Commission (2011), <i>Impact Assessment of an Initiative on Concessions</i>, pp. 77-91, 20 December. Viewed at: <a href="http://ec.europa.eu/internal_market/publicprocurement/docs/concessions/SEC2011_1588_en.pdf">http://ec.europa.eu/internal_market/publicprocurement/docs/concessions/SEC2011_1588_en.pdf</a>.</p>

Source: Information provided by the European Commission, unless otherwise indicated.

**Table 4.29 Market structure and regulatory framework of solid and hazardous waste management services**

Solid and hazardous waste management services	
EU share of the global market (2010)	Solid waste management: 27.7% (source EBI). Hazardous waste management: 27.9% (source EBI)
Share of the private sector in the revenues of the solid waste management industry (2011)	50% (in the form of concessions)
Market size, number of firms, and employment (2010)	Solid waste management: US\$38.9 billion of revenues (source EBI). Hazardous waste management: US\$6.2 billion of revenue (source EBI). "Industrial waste management services sector": US\$75 billion or €55 billion (source Frost and Sullivan <sup>a</sup> ). "Waste management": €75 billion over 3,000 private firms, over 320,000 employees (source European Federation of Waste Management <sup>b</sup> ). "Recycling": €50.7 billion (2007) (EUROSTAT); 1.6 million of employees (2007) (EUROSTAT) EU: 50% of waste treatment is operated on the basis of a concession. France: 80%-90% of contracts under way are concessions
Volume produced (2011)	EU production of waste: 3 billion tonnes, i.e. 6 tonnes/inhabitant. EU production of hazardous waste: 90 million tonnes
Main private companies (2009) and number of countries (including EU member States) in which they operate	Top 15: Veolia (France, 15), Suez Environnement (France, 18), Remondis (Germany, 21), FCC (Spain, 11), Alba (Germany, 4), Urbaser (Spain, 6), AVR-Van Gansewinkel (USA/UK, 8), Shanks (UK, 3), Séché-Saur (France, 3), CESPA (Spain, 2), Ragn-Sells (Sweden, 6), Delta (Netherlands, 2), Lassila and Tikanoja (Finland, 4), CNIM (France, 3) (source: PSI)
Level of regulation	EU; member States

Solid and hazardous waste management services	
Main "qualitative" regulations	Directive 2008/98/EC on waste so-called "Waste Framework Directive" (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0098:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0098:EN:NOT</a> ). For detailed legislation, see European Commission online information. Viewed at: <a href="http://ec.europa.eu/environment/waste/legislation/index.htm">http://ec.europa.eu/environment/waste/legislation/index.htm</a> Waste Framework Directive 2008/98 sets the basic concepts and definitions related to waste management, such as definitions of waste, recycling and recovery, and lays down some basic waste-management principles. It contains requirements relating to the provision of services: (a) establishments or undertakings which collect or transport waste on a professional basis; and (b) dealers or brokers. Article 26 refers to a requirement for member States to ensure that the competent authority keeps a register of these entities.
Main "economic" regulations	Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts, and public service contracts (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT</a> )
Ongoing regulatory developments	As described above for water and waste water utilities

- a Frost and Sullivan online information. Viewed at: <http://www.frost.com/prod/servlet/presentation.jsp?ctixixpLink=FcmCtx1&searchQuery=waste&bdata=aHR0cDovL3d3dy5mcm9zdC5jb20vc3JjaC9jYXRhbG9nLXNlYXJjaC5kbz9xdWVyeVRleHQ9d2FzdGUmcGFnZVNpemU9OCZwYWdPTImc29ydEJ5PURAfkbTZWfY2gqUmVzdWx0c0B+QDEzMTcxOTQ3ND15MzY=&docid=242671976&ctixixpLabel=FcmCtx2>.
- b FEAD (2011), *Representing an Integrated and Balanced Approach to Waste Management in Europe*, p.2. Viewed at: [http://www.fead.be/uploads/FEADA4\(PRO-EN\)-PRO.pdf](http://www.fead.be/uploads/FEADA4(PRO-EN)-PRO.pdf).

Source: Information provided by the European Commission, unless otherwise indicated.

**Table 4.30 Market structure and regulatory framework of air and noise pollution abatement services**

Air and noise pollution abatement services	
Market size	<b>Noise pollution:</b> the overall market of environmental noise reduction can have a turnover of some tens of billion euros per year (EU-27). Concerning the costs at source, 14 million new cars per year, and an estimated cost of insulation distributed among exhaust, engine, appropriate tyres of €800 per car means an additional €12 billion per year, approximately. For aircrafts, considering that noise is a major issue and requires investment in research and assessment, and involves extra costs in new engines and airframes, and taking this at 5% of the direct aircraft industry turnover, it can be estimated at €5 billion per year. For railways, the amount is probably similar. Overall, it can be considered that 15,000 jobs are based on noise pollution abatement services and that the turnover corresponds to €50 billion per year (EU-27). <b>Air pollution:</b> the total value estimated on the basis of air pollution abatement costs alone is in the range of 0.5% to 0.6% <sup>a</sup> of the GDP in the EU. This market value is expected to increase in future and be in the range of €80 billion per year by 2020. According to the authorities, Europe is leading the sector on technologies for noise and air pollution abatement. Figures on materials (such as exhaust systems for cars, materials for noise barriers, filters for industry, aircraft components, etc.), are not known.
Level of regulation	EU; member States
Main regulations	Directive 2008/50/EC on ambient air quality and cleaner air for Europe (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0050:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0050:EN:NOT</a> ). For more detailed legislation, see European Commission online information. Viewed at: <a href="http://ec.europa.eu/environment/air/legis.htm">http://ec.europa.eu/environment/air/legis.htm</a> Industrial Emission Directive 2010/75 (viewed at: <a href="http://ec.europa.eu/environment/air/pollutants/stationary/ied/legislation.htm">http://ec.europa.eu/environment/air/pollutants/stationary/ied/legislation.htm</a> . Environmental Noise Directive 2002/49 (viewed at: <a href="http://ec.europa.eu/environment/noise/directive.htm">http://ec.europa.eu/environment/noise/directive.htm</a> )

Air and noise pollution abatement services	
	There has been no significant change in legislation on noise pollution abatement services in the past five years. EU air quality legislation is presently under review and the Commission plans a "package" as part of the 2013 Thematic Strategy on Air Pollution. That review will also include a major component on research and innovations and the green economy and socio-economic impacts of this new policy initiative. The Environmental Noise Directive 2002/49 obliges member States to prepare noise maps, inform and consult the public and adopt action plans to tackle noise. It sets no noise limits. The Industrial Emission Directive (IED) 2010/75 aims at minimizing pollution from various industrial sources throughout the EU. Operators of industrial installations operating activities covered by Annex I of the IED are required to obtain an integrated permit from the authorities in EU countries.
Remediation and nature and landscape protection (NLP) services	
EU share of the worldwide remediation and industrial services market	25.8% (source EBI)
Revenues, number of firms, and employment in the remediation and industrial services sector	<p>US\$10 billion of revenues (2010) (source EBI)</p> <p>In the context of sites in the NATURA 2000 network, established under the EU Habitats and Birds Directive, there is a significant amount of management and restoration works to be undertaken. The overall estimated annual cost of managing the NATURA 2000 network, based on information supplied by the member States, is estimated to be about €5.8 billion per year. It is estimated that at most 10%-20% of this is currently being met. Independent studies carried out of the economic value of the benefits of NATURA 2000 by the Institute of European Environmental Policy estimated that the ecosystem services of NATURA 2000 are worth a minimum of €200-€300 billion per year (viewed at: <a href="http://ec.europa.eu/environment/nature/natura2000/financing/docs/Economic_Benefits_of_Natura_2000.pdf">http://ec.europa.eu/environment/nature/natura2000/financing/docs/Economic_Benefits_of_Natura_2000.pdf</a>).</p> <p>One of the studies informing this estimate related to employment and recreation/tourism. This study estimated that there are between 1.2 billion to 2.2 billion visitor days to NATURA 2000 sites each year providing recreational benefits estimated at between €5 billion and €9 billion per annum, based on estimates of visitors' willingness to pay per recreational visit. Visitor expenditure resulting from these visits provide direct and indirect economic impacts estimated in the range of €50-85 billion and supporting directly and indirectly between 4.5 million and 8 million full-time equivalent jobs (viewed at: <a href="http://ec.europa.eu/environment/nature/natura2000/financing/docs/Estimating_economic_value.pdf">http://ec.europa.eu/environment/nature/natura2000/financing/docs/Estimating_economic_value.pdf</a>).</p>
Level of regulation	EU; member States
Main regulations	<p>Directive 92/43 on the conservation of natural habitats and of wild fauna and flora – Habitats Directive (viewed at: <a href="http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm">http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm</a>);</p> <p>Directive 2009/147 on the conservation of wild birds – Birds Directive (viewed at: <a href="http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm">http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm</a>).</p> <p>There has been no recent change to EU nature legislation that is relevant to remediation and nature and landscape protection services. The Habitats Directive forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the NATURA 2000 network of protected sites and the strict system of species protection. The directive protects over 1.000 animals and plant species and over 200 so-called "habitat types" (e.g. special types of forests, meadows, wetlands, etc.), which are of European importance. The Birds Directive creates a comprehensive scheme of protection for all wild bird species naturally occurring in the Union.</p>

- a See International Institute for Applied Systems Analysis (2011), *Cost-effective Emission Reductions to Improve Air Quality in Europe in 2020*, 31 March. Viewed at: [http://www.unece.org/fileadmin/DAM/env/documents/2011/eb/wg5/WGSR48/Informal%20docs/Info.doc.8\\_CIAM\\_report\\_on\\_Cost\\_effective\\_emission\\_reductions\\_to\\_improve\\_air\\_quality\\_in\\_Europe\\_in\\_2010.pdf](http://www.unece.org/fileadmin/DAM/env/documents/2011/eb/wg5/WGSR48/Informal%20docs/Info.doc.8_CIAM_report_on_Cost_effective_emission_reductions_to_improve_air_quality_in_Europe_in_2010.pdf).

Source: Information provided by the European Commission, unless otherwise indicated.

4.118. The trade regimes of EU environmental services appear very open. Under GATS, all environmental services are covered by commitments save some minor intra-sectoral exceptions mostly concerning new member States. Mode 3, which is the essential mode of provision of these services, is entirely committed for all services except noise abatement and for all members, except Cyprus, Hungary, Malta, Poland, and Romania for all sectors, and Finland and Sweden for some.

4.119. Regarding FTAs, the agreement with Chile includes a sector that is not covered by the EU GATS commitments, namely water collection purification and distribution services through mains except steam and hot water, with full mode 3 commitments for 13 member States, while 14 other remain unbound. The corresponding applied regime at EU level, and its ongoing reform, is described above in the regulatory framework chart and regarding third party access it contains a cross reference to the WTO Agreement on Government Procurement.

4.120. For all other environmental services, the regime granted by the FTAs regarding the key mode 3 is more favourable than the GATS one, several member States having lifted their mode 3 restrictions. There is no other preferential treatment granted by sectoral agreements. The applied regime for sewage services is similar to that to water distribution and is subject to the same ongoing regulatory reforms. For all other services the applied regime at EU level adheres to the standards rules of the EU Treaty regarding establishment and freedom to provide services. Table A4.9 describes in more detail these trade regimes.

### 4.3.3 Transport services

#### 4.3.3.1 Air transport services

4.121. Table 4.31 describes the main economic characteristics as well as the existing and planned regulatory framework for EU aviation services.

**Table 4.31 Regulatory framework for EU aviation services**

<b>Generic economic data on the EU aviation sector</b>
Number of jobs supported: direct 3 million; direct and indirect: 5.1million (2011)
Contribution to EU GDP: €365 billion, i.e. 2.4% (2011)
Number of scheduled airlines: 146 (2012)
Number of airports: 450 (2011)
Number of air navigation providers: 60 (2010)
Number of passengers (departed and arrived): 820 million (2011)
Growth in the number of intra-EU routes since full liberalization: +145% (1992-2012)
Growth in the number of intra-EU routes with more than 2 carriers since full liberalization: +430% (1992-12)
<b>Existing regulatory regime (EU level)</b>
<u>Aircraft repair and maintenance</u> : no EU level market access entry regulations, except for routine services performed before the flight and non-routine services performed before the flight, the provision and administration of spare parts and suitable equipment, the request for or reservation of a suitable parking and/or hangar space which are regulated by Directive 96/67 on ground handling services at EU airports. The EU regulation on certification of foreign and EU repair stations is based on safety considerations and ensured by the European Agency for Safety in Aviation (EASA). For more elements, see WTO document S/C/W/270, 18 July 2006, pp. 14 and 19.
<u>Computer reservation services and selling and marketing</u> : Regulation 80/2009 on a Code of Conduct for computerised reservation systems: this regulation does not deal strictly speaking with market access (where the general rules of the Treaty apply) but with competition policy and safeguards (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R0080:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R0080:EN:NOT</a> ).

**Ground-handling services:** Directive 96/67/EC on access to the ground-handling market at Community airports (viewed at: [http://eurlex.europa.eu/smartapi/cgi/sqa\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=Directive&an\\_doc=1996&nu\\_doc=67](http://eurlex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=1996&nu_doc=67)) and standard clauses for inclusion in bilateral air services agreements (allowance for self-handling and competitive choice among third-party handlers and, if not legally permitted, non-discriminatory treatment of EU airlines (viewed at: [http://ec.europa.eu/transport/modes/air/international\\_aviation/doc/standard\\_clauses\\_en.pdf](http://ec.europa.eu/transport/modes/air/international_aviation/doc/standard_clauses_en.pdf)).

**Airport services:** the EU is neutral regarding ownership and corporatization policies which are decided at member State level in application of the subsidiarity principle. In most member States, the legal framework allows corporatization and private management of airport services in the form of concessions, and in some member States, such as the United Kingdom and Portugal, there has been full privatization of these types of services.

Airport charging is regulated at EU level by Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0012:EN:NOT>).

**Slots:** Regulation (EC) 793/2004 on common rules for the allocation of slots at Community airports (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0793:EN:NOT>).

**Commercial aviation:** single market: Regulation 1008/2008 on common rules for the operation of air services in the EU (viewed at: [http://europa.eu/legislation\\_summaries/transport/air\\_transport/tr0008\\_en.htm](http://europa.eu/legislation_summaries/transport/air_transport/tr0008_en.htm)).

#### Ongoing regulatory developments

**"Fitness check" of the single aviation market rules:** initiated by the Commission in January 2011, this exercise is still ongoing and will soon be completed (it is tentatively scheduled to be published before the end of March 2013). It concerns three regulations:

- For Regulation 1008/2008 on common rules for the operation of air services in the EU (which is a recast of the third package of liberalization), the following points will be discussed: price transparency provision, measures to be taken in case of bankruptcy, public services obligations, social impact of the single market, traffic distribution among airports in the same conurbation, remaining member States' measures restricting charter and taxi services to operate to third countries, and wet leasing conditions.
- For Regulation 80/2009 on a Code of Conduct for computerised reservation systems which simplified the previous legislation by taking into account technological developments (internet) and market developments (airline direct sales to consumer), the aim is to check whether and how market conditions have changed since its inception.
- For Regulation 785/2004 on insurance requirements for air carriers and aircraft operators, the aim is to evaluate ways to cover liabilities for terrorist acts.

(Viewed at: [http://ec.europa.eu/transport/modes/air/internal\\_market/doc/2011\\_fitness\\_check\\_roadmap\\_def.pdf](http://ec.europa.eu/transport/modes/air/internal_market/doc/2011_fitness_check_roadmap_def.pdf).)

**Airport package:** adopted by the Commission on 1 December 2011, the "airport package" is still under discussion. The "package" contains three sets of proposals: on ground handling, on slots and on noise as well as a communication on "Airport policy in the European Union – addressing capacity and quality to promote growth, connectivity and sustainable mobility" (viewed at: [http://ec.europa.eu/transport/modes/air/airports/index\\_en.htm](http://ec.europa.eu/transport/modes/air/airports/index_en.htm)).

**Slots:** as compared to the present rules, the main changes proposed are:

- to allow airlines to trade slots with each other at airports anywhere in the EU in a transparent way;
- to reform the rules designed to help new entrants access the market at congested airports. which will allow a greater number of carriers to challenge more effectively the "dominant" carriers which have a large presence at busy airports;
- to tighten the rules requiring airlines to demonstrate that they have used their slots sufficiently during the season;
- to tighten the rules on the independence of the coordinator and increase the level of transparency on slot transaction, in order to make the market work better;



- to improve the information flow between slot coordinators, airports, airlines, national authorities and organizations providing air traffic control, in order to inform decisions on airport coordination; and
- to allow the system to react better to disruptions, for example due to severe weather conditions.

According to analysis carried out by the Commission, the changes proposed could be worth €5 billion to the European economy and create 62,000 more jobs over the period 2012-25 and would allow the system to handle 24 million more passengers a year by 2025.

Ground handling: as compared to the present rules, the main changes proposed are:

- to introduce full opening of the self-handling market for airlines and increase the minimum number of service providers (in restricted services i.e. baggage handling, ramp handling, fuel and oil handling, freight and mail handling) from two to three at large airports;
- to establish a new role for the airport managing body as "ground coordinator" of ground services: airports will be tasked with the proper coordination of ground handling within an airport and will be given the tools to establish minimum quality standards to be respected by all ground handlers at their airport. In addition, the proposals will clarify rules for subcontracting;
- to introduce a new possibility for member States to impose a requirement on companies that win ground-handling contracts in restricted markets to transfer the staff from the previous contract holder with their full existing conditions;
- to establish compulsory minimum training for staff;
- to institute mutual recognition of national approvals for ground-handlers issued by member States; and
- to introduce greater transparency on how airlines (and their handlers) are charged for airport "centralized infrastructures" (for example, fees charged by the airport for the use of baggage processing systems) and under which conditions airports themselves can provide ground-handling services to create a more level playing field to allow independent handlers to compete more effectively.

Noise: proposals to increase the transparency in the process of setting noise-related restrictions at airports, including an oversight role for the Commission. This is not about targets, but about the decision-making process. It gives the Commission a scrutiny role – it does not replace a member State's final decision. The proposals also update existing legislation in line with technological developments to make it easier for authorities to phase out the noisiest planes.

Common external aviation policy: the renewed basis for the common external aviation policy is the 20 December 2012 "Policy Conclusions of the Council". Among its 31 points one may note in particular:

- the planned reform of Regulation 868/2004 concerning protection against subsidization and unfair pricing practices causing injury to EU carriers;
- the definition at EU level of a template for a "fair competition clause" as a basis for inclusion in air services agreements;
- the conclusion of EU-wide agreements (so-called "EU comprehensive agreements" as opposed to "horizontal agreements" dealing with the adoption of community ownership clause) with Mediterranean and eastern and central European countries (so-called neighbourhood policy countries), Russia, India, certain Gulf countries, ASEAN, and China;
- an active EU impetus in the ICAO negotiations on the liberalization of ownership and on a global market-based approach to regulating greenhouse gas emissions from aviation (on the latter point see also below); and
- regulatory convergence beyond market issues on safety, security, certifications, working conditions etc., notably with the US and neighbourhood policy countries.

(Viewed at: [http://ue.eu.int/uedocs/cms\\_data/docs/pressdata/en/trans/134518.pdf](http://ue.eu.int/uedocs/cms_data/docs/pressdata/en/trans/134518.pdf).)

**Emission trading scheme (ETS) for aviation:** since the start of 2012, emissions from international aviation are included in the EU Emissions Trading Scheme (EU ETS). The system applies to EU and non-EU airlines alike. Emissions from flights to and from Iceland, Liechtenstein and Norway are also covered.

The necessary legislation for bringing aviation into the EU ETS was proposed by the European Commission in 2006 and adopted by the 27 member States and the European Parliament in 2008 (Directive 2008/101/EC amending Directive 2003/87/EC) so as to include aviation activities in the scheme for greenhouse-gas-emission-allowance trading within the Community. Incoming flights can be exempted from the EU ETS if the EU recognizes that the country of origin is taking measures to limit aviation emissions from departing flights (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0101:EN:NOT>).

In November 2012, the Commission made a proposal to exempt from enforcement flights into and out of Europe operated in 2010, 2011 and 2012 to provide negotiation time for the ICAO General Assembly in autumn 2013. The proposal was approved by the European Parliament and the Council on 24 April 2013. The decision (Decision No. 377/2013) entered into force with immediate effect.

The general legislation will continue to apply to all flights within and between the 30 European countries in the EU ETS.

The Commission believes a global solution is within reach at the 2013 ICAO General Assembly. In its statement the Commission made clear that, should this meeting fail to make the necessary progress, the EU ETS legislation would be applied in full again to all flights to and from European airports, possibly with a date indication (viewed at: [http://ec.europa.eu/clima/policies/transport/aviation/index\\_en.htm](http://ec.europa.eu/clima/policies/transport/aviation/index_en.htm)).

Source: Information provided by the European Commission.

4.122. The regime of air transport services appears quite liberal. Regarding the three services explicitly covered by the GATS air transport annex (maintenance and repair of aircraft, selling and marketing of air transport services and computer reservation services) the FTA commitments slightly improve the already liberal GATS commitments by for instance binding EU-CARIFORUM's and EU-Korea's commercial presence without restrictions for all member States for maintenance and repair, while this sector remains uncommitted or subject to restrictions in a few member States under GATS. The EU-Korea FTA contains an MFN exemption of maintenance and repair that has no equivalent under the GATS. FTA commitments on selling and marketing and computer reservation services largely echo those undertaken under GATS. For rental of aircraft with crew, FTA commitments cover all member States, while GATS' ones only cover one member State and reflect existing EU regulation on wet leasing.

4.123. Two FTAs (with Korea and CARIFORUM) include commitments on ground-handling services, an area not covered by EU commitments but covered by its Doha Development Agenda offer. The same goes for airport management services bound by the EU-CARIFORUM agreement. Finally, FTA commitments on storage and warehousing and freight transport agency services for air transport improve GATS commitments notably in terms of geographical coverage. In terms of applied regime, save for commercial aviation (airlines and air taxi), the air transport sector obeys the general rules of treaties on establishment and there is therefore no foreign ownership restriction (Table A3.10).

#### 4.3.3.2 Rail transport services

4.124. Railway transport is historically a major transport sector in the EU although its intermodal shares have been declining both for passenger and freight transport since the thirties due to competition with road transport (passenger cars and lorries).

4.125. Over the last fifteen years this evolution has been more pronounced for freight traffic (intermodal share 20.2% in 1995, 15.8% in 2009) than for passenger transport (1995: 12.6%, 2010: 10.2%). Like elsewhere in the world, this sector is in a constant flux of reforms to adapt itself to this competitive situation. The traditional model of an integrated state-owned monopoly has progressively given way to new forms of delivery such as vertical separation between a network operator and a plurality of transport operators operating either under a licence in competition on the same network or through time-bound concessions with a monopoly on a given section of the network. In addition, in the case of the EU a process of liberalization of cabotage has taken place in the area of freight and is programmed for passenger traffic. In spite of considerable

progress in productivity, railways remain very important employers due to the labour-intensive nature of the activity.

4.126. In the EU as whole the rail industry has a turnover of €73 billion, which corresponds to 65% of that of air (€112 billion), with 800,000 employees. Rail is critical to the effective functioning of the European economy. More than 8 billion passenger journeys are made by rail each year. Rail carries about 10% of all freight traffic across Europe, with an estimated revenue of €13 billion. Another parameter of the economic importance of railways is the vast amount of funds that public authorities invest in it. In 2009 this amounted to some €46 billion of public subsidies. With this kind of public funding becoming scarcer, underinvestment risks a cycle of decline, with decaying infrastructure and rolling stock rendering rail unattractive.

4.127. The economic importance and density of railway networks vary however considerably from member State to member State with different types of traffic (e.g. high-speed lines versus regional services or dedicated freight corridors versus isolated wagonloads), due to historical, geographical, and industrial and urban density reasons. Table 4.32 gives an overview of these diverse situations in terms of employment, length of network, network density, and importance of traffic as a whole, as well as in terms of the relative share of international traffic.

**Table 4.32 Rail transport indicators**

	2009		2008	2010				
	Lines in use (km)	Density (km/1,000 km <sup>2</sup> )	Employment (number)	Freight (million tonne/km)		Passenger (million passenger/km)		
				National	International	National	International	Of which, under PSO <sup>a</sup>
Austria	5,635	67.2	13,096	5,800	14,000	..	..	..
Belgium	3,578	117.2	..	1,779	3,950	9,231	1,379	9,225
Bulgaria	4,150	37.4	17,892	2,218	964	2,045	55	1,740
Cyprus	..	..	0	..	..	..	..	..
Czech Republic	9,578	121.4	..	5,714	8,056	6,263	328	..
Denmark	2,667	61.8	9,527	167	2,075	6,200	..	6,347
Estonia	919	21.0	3,109	724	5,917	229	18	229
Finland	5,919	17.5	..	6,915	2,835	3,869	90	..
France	29,422	53.3	..	22,500	7,600	..	..	24,400
Germany	33,714	94.4	77,410	54,529	52,787	78,515	4,538	..
Greece	2,552	19.4	..	..	..	..	..	..
Hungary	7,892	84.8	17,515	1,330	7,460	7,316	376	7,316
Ireland	1,919	27.5	..	92	..	1,582	96	1,678
Italy	17,004	56.4	57,394	7,519	5,885	43,348 <sup>b</sup>	43,348 <sup>b</sup>	22711
Latvia	1,884	29.2	5,111	291	16,887	670	79	670
Lithuania	1,767	28.2	..	3,376	10,055	226	147	..
Luxembourg	275	106.3	..	50	689	246	103	343
Malta	..	..	..	..	..	..	..	..
Netherlands	2,886	69.5	..	950	5,435	16,002	966	..
Poland	20,770	66.4	119,328	27,941	21,014	17,918	530	13,645
Portugal	2,842	30.9	..	2,095	389	4,008	103	2,365
Romania	10,776	45.2	..	10,345	2,029	5,308	129	..
Slovakia	3,623	73.9	..	762	9,721	..	..	..
Slovenia	..	..	..	263	3,649	680	..	792
Spain	13,336	26.3	21,063	6,370	1,047	20,421	557	10,555
Sweden	11,138	25.2	9,882	14,828	8,634	10,674	544	..
United Kingdom	16,272	66.7	..	18,169	408	54,111	172	53,630

.. Not available.

a Public service obligation.

b Total national and international.

Source: European Commission document SWD(2012) 246 final, 21 August 2012. Viewed at: [http://eur-lex.europa.eu/Result.do?T1=V7&T2=2012&T3=246&RechType=RECH\\_naturel&Submit=Search](http://eur-lex.europa.eu/Result.do?T1=V7&T2=2012&T3=246&RechType=RECH_naturel&Submit=Search).

4.128. Table 4.33 describes the existing EU level regulatory framework of railway transport.

**Table 4.33 EU existing regulatory framework for railway transport**

**The First Railway Package** was adopted in 2001, and entered into force in March 2003, was designed to:

- open the Trans-European Rail Freight Network to competition, establish a general framework for the development of European railways, and clarify the relationship between (a) the state and the infrastructure manager; (b) the state and railway undertakings; and (c) the infrastructure manager and railway undertakings (Directive 2001/12/EC) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0012:EN:HTML>);
- set out the conditions that freight operators must meet in order to be granted a licence to operate services on the European rail network (Directive 2001/13/EC) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:075:0026:0028:EN:PDF>); and
- define policy for capacity allocation and infrastructure charging (Directive 2001/14/EC). It has been recently recast (see below the section on "main regulatory developments since the last TPR report) but its present provisions remain valid until the provisions of the recast are transposed (deadline 2015) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0014:en:HTML>).

**The Second Railway Package** was adopted in 2004 and entered into force on 31 December 2005. Its aim was to determine:

- a common approach to rail safety (Directive 2004/49/EC) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0049:en:NOT>);
- requirements for interoperability of the European high speed and conventional rail systems (Directive 2004/50/EC) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0050:en:NOT>);
- the opening of national and international rail freight markets on the entire European network (Directive 2004/51/EC) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0051:en:NOT>); and
- the establishment of the European Railway Agency (Regulation (EC) 881/2004, amended by Regulation 1335/2008) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:354:0051:0059:EN:PDF>).

**The Third Railway Package** was adopted in 2007, and entered into force in June 2009, to open up international passenger services to competition. The objective of the package was:

- to open the market for international passenger services to competition (Directive 2007/58/EC) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0044:0050:EN:PDF>);
- to set the conditions and procedures for the certification of train crews operating locomotives and trains (Directive 2007/59/EC) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0051:0078:EN:PDF>);
- to ensure basic rights for rail passengers (Regulation 1371/2007), for example, with regard to insurance, ticketing, and for passengers with reduced mobility (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0014:0041:EN:PDF>).

Source: Information provided by the European Commission.

4.129. The state of play in terms of liberalization following the implementation of the three railways packages, as it stands on January 2013, is summed up in the two following tables, which describe respectively the various types of institutional structure, repartition of functions and the relationship between infrastructure managers and railway undertakings retained by the member States (Table 4.34), and the number of railway undertakings operating in both the freight and passenger markets in each member State as well as the present market share of railway undertakings other than the incumbent former state monopoly (Table 4.35).

**Table 4.34 Institutional settings in the member States**

Infrastructure manager (IM) responsibilities	Level of independence	Member States
IM in charge of all IM functions (incl. capacity allocation and charging)	IM institutionally independent from any railway undertaking	Bulgaria; Czech Republic; Denmark; Estonia; Finland; Greece; Netherlands; Portugal; Romania; Slovakia; Spain; Sweden; and United Kingdom (excluding Northern Ireland)
IM in charge of all IM functions (incl. capacity allocation and charging)	Legally independent IM owned by a holding company which also owns and controls a railway undertaking but with strong guarantees of organizational and decision-making independence in relation to the railway undertaking	Belgium and Latvia
IM in charge of IM functions with the exception of the essential functions (capacity allocation and charging) under the responsibility of a separate body	IM integrated in a structure responsible for transport operations Separate body in charge of essential functions institutionally independent	Hungary; Lithuania; Luxembourg; and Slovenia
IM in charge of the essential functions (capacity allocation and charging) but having delegated specific parts of the essential function capacity allocation and other IM functions (e.g. maintenance) to a railway undertaking	IM institutionally independent from any railway undertaking	France
IM in charge of all IM functions (incl. capacity allocation and charging)	Legally independent IM owned by a holding company which also owns and controls one of the operators with limited guarantees of organizational and decision-making independence in relation to the railway undertaking	Austria, Germany, Italy, and Poland
IM in charge of all IM functions (incl. capacity allocation and charging)	IM integrated in a structure responsible for transport operations	Ireland and the United Kingdom (for the part of Northern Ireland)

Source: European Commission document SWD(2013) 12 final, 30 January 2013. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0012:FIN:EN:PDF>

**Table 4.35 Railway undertakings**

	Rail freight transport		Rail passenger transport	
	No. of undertakings	Total market share of all but the principal railway undertakings (%)	No. of undertakings	Total market share of all but the principal railway undertakings (%)
Austria	6	14.60	2	5.40
Belgium	6	11.82	2	0.20
Bulgaria	5	21.60	2	2.60
Cyprus	n.a.	n.a.	n.a.	n.a.
Czech Republic	10	13.16	5	0.24
Denmark	3	25.00	12	18.00
Estonia	2	45.00	3	50.00

	Rail freight transport		Rail passenger transport	
	No. of undertakings	Total market share of all but the principal railway undertakings (%)	No. of undertakings	Total market share of all but the principal railway undertakings (%)
Finland	1	0.00	1	0.00
France	2	20.00	2	1.00
Germany	2	25.00	2	8.00
Greece	1	..	1	..
Hungary	6	19.47	2	1.80
Ireland	1	0.00	1	0.00
Italy	2	24.10	2	8.30
Latvia	3	23.30	2	10.54
Lithuania	1	0.00	1	0.00
Luxembourg	1	0.00	..	..
Malta	n.a.	n.a.	n.a.	n.a.
Netherlands	2	40.00	2	4.80
Poland	8	35.82	4	48.31
Portugal	1	..	1	..
Romania	10	54.70	2	3.93
Slovakia	3	2.03	1	0.03
Slovenia	3	0.00	1	0.01
Spain	5	8.08	1	0.00
Sweden	9	40.00	17	..
United Kingdom	4	51.40	19	89.90

.. Not available.

n.a. Not applicable.

Source: European Commission document SWD(2012), 246 final, 21 August 2012. Viewed at: [http://eur-lex.europa.eu/Result.do?T1=V7&T2=2012&T3=246&RechType=RECH\\_naturel&Submit=Search](http://eur-lex.europa.eu/Result.do?T1=V7&T2=2012&T3=246&RechType=RECH_naturel&Submit=Search).

4.130. The main regulatory development that occurred during the period under review was the adoption of the recast of the first package on 21 November 2012. That recast will enter into force in 2015. Table 4.36 describes its main provisions.

**Table 4.36 Regulatory developments during the period under review: Recast of the first package**

Directive 2012/34/EU establishing a single European railway area (recast) merges 3 previous major directives<sup>a</sup> and later pieces of legislation amending or completing them (9 previous legislative texts in total). It aims at strengthening the power of regulatory bodies, improving the framework for investment in rail and ensuring fairer access to rail infrastructure as well as rail related facilities and services. The new rules will be transposed by 2015 (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:343:0032:0077:EN:PDF>).

The most important elements of the Directive in comparison with previous legislation are:

**a) In the field of financing and charging**

A compulsory rail infrastructure development strategy by member States for at least five years, the generalization of contractual agreements, the inception of the principle of short-term balance of accounts (maximum five years)<sup>b</sup>, the definition of harmonized performance schemes<sup>c</sup>, the modalities of calculation of direct costs<sup>d</sup> as well as the definition of market segments for mark-ups<sup>e</sup> to be regulated in implementing measures, the clarification of principles applying to charges for rail-related services, mandatory cooperation between infrastructure managers for charging international train paths, the definition of common rules for noise-related modulation of infrastructure charges, mandatory European Train Control System (ETCS) related modulation of infrastructure charges, reservation charges in case of competition mandatory if there is a regular failure to use allocated paths.<sup>f</sup>



**b) In the field of competition**

The clarification of existing rules on the separation of accounts, the specification of detailed contents and compulsory translation of "network statements", mandatory cooperation between international managers for international capacity allocation, provision for improved transparency of the scheduling process, compulsory information on maintenance work, a limited re-categorization of rail-related services (heavy maintenance for high speed and ancillary services; definitions of "heavy maintenance" and "storage sidings"), extension of the principle of management independence to storage sidings and refuelling facilities, the definition of principles for the allocation of capacity in case of conflicting requests (definitions of "alternative route" and "viable alternative"), the creation of a "use it or lease it" clause to be applied after two years of no use, the creation of authorization procedure for cross-border agreements.<sup>9</sup>

**c) In the field of regulatory bodies**

The mandatory creation of a single authority independent from any other public authority, the definition, criteria for recruitment of management, the allowance of actions on their own initiative by regulatory bodies, the extension of their competence to rail-related services<sup>h</sup>, the obligation to allocate human and material resources proportionate to the importance of the sector, the establishment of new deadlines for regulators' decision-making, the right to request examination of national measures by the European Commission, stronger coordination among national regulators (network with European Commission participation + exchange of information).

**d) In the field of reinforced monitoring by the European Commission**

Extended scope of the Rail Market Monitoring Scheme (to investments, rail-related services and social conditions), possibility of a Commission decision on the application of national measures in relation to the application of the Directive.

The Directive refers to 16 implementing measures, including 8 mandatory ones (modalities for the calculation of direct costs, noise-related and ETCS-related modulation of infrastructure charges, determination of the principal purpose of new services<sup>i</sup> and whether a new service damages the economic equilibrium of public service contracts, a common template for EU licences, criteria for authorized applicants, levies on passenger services) and 8 optional ones (such as the procedures and criteria for framework agreements, access to service facilities and services, common principles and practices for the decision-making of regulatory bodies). It also refers to 4 delegated acts (licensing requirements related to financial fitness, performance schemes, the schedule for the allocation process and accounting information to be supplied to regulatory bodies).

- a Directive 91/440/EEC on the development of the Community's railways, Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.
- b Article 8 of Directive 2012/34/EU.
- c Article 35 and Annex VI.2 of Directive 2012/34/EU.
- d Article 31(3) of Directive 2012/34/EU.
- e Article 32(1) and Annex VI.1 of Directive 2012/34/EU.
- f Article 36 of Directive 2012/34/EU.
- g Article 14 of Directive 2012/34/EU.
- h Article 56(1) of Directive 2012/34/EU for the extension of the competences of the regulatory body to rail-related services; Article 13 and Annex II of Directive 2012/34/EU for the definition of rail-related services.
- i Domestic or international.

Source: Information provided by the European Commission.

4.131. The major planned evolution of the regulatory framework is the so-called fourth "package" proposed by the Commission in January 2013 on which discussion is about to begin. Table 4.37 below describes the main elements of this proposal.

**Table 4.37 On-going regulatory developments: the "fourth package" Commission proposal**

The College of Commissioners decided on the Fourth Railway Package on 30 January 2012. The complete texts of the proposal are available at: [http://ec.europa.eu/commission\\_2010-2014/kallas/headlines/news/2013/01/fourth-railway-package\\_en.htm](http://ec.europa.eu/commission_2010-2014/kallas/headlines/news/2013/01/fourth-railway-package_en.htm).

The proposed package has 3 pillars:

**Market opening:** at the moment, in many cases individual operators are granted exclusive rights to the market and compensation payment for public service obligations without competition, which provides no pressure for improvement. In member States that have taken the initiative to open domestic passenger services to competition, such as the United Kingdom, Germany and Sweden, both the volume and quality of services offered to passengers have increased, and the value for money for contracting authorities has been improved by up to 30%. Therefore, the Commission proposes:

- the opening of domestic rail passenger markets (amendments to Directive 2012/34/EU establishing a single European railway area); and
- a compulsory tendering for public services (amendments to Regulation (EC) 1370/2007 on public passenger transport services by rail and by road).

**Independence of infrastructure managers from transport operators:** the Commission is willing to strengthen independence criteria for infrastructure managers without full unbundling becoming compulsory for those member States who have not opted for full separation at the time of the entry into force of the new Directive amending Directive 2012/34/EU.

To that effect, the proposal suggests abolishment of the option set out in the existing text for functions of the infrastructure manager on a network or part of a network to be allocated to different bodies or firms and details all the relevant functions of infrastructure management that are to be performed by the infrastructure manager, in order to ensure that all these functions are fulfilled in a consistent manner. It also clarifies the meaning of the different functions of infrastructure management.

It also introduces the institutional separation of the infrastructure manager from transport operations, by prohibiting the same legal or natural person from having the right to control or exercise influence over an infrastructure manager and a railway undertaking at the same time. However, it allows for the possibility of a member State to be owner of both legal entities, in which control should be exercised by public authorities that are separate and legally distinct from each other.

A key element is that the proposal allows vertically integrated undertakings, including those with a holding structure, to maintain ownership of the infrastructure manager. This would however be possible only if strict so-called "China walls" are enforced. In other words, it clarifies that the holding model is only permissible if conditions are fulfilled which ensure that the infrastructure manager has effective decision-making rights for all its functions. It further sets out that this must be guaranteed by strong and efficient safeguards protecting the infrastructure manager's independence. It specifies that these safeguards should be in place with regard to the structure of the undertaking, including the separation of financial circuits between the infrastructure manager and other companies of the integrated group. It also sets out rules on the management structure of the infrastructure manager.

Finally to ensure compliance the proposal suggests establishing a possibility for member States to limit access rights of railway operators which are part of vertically integrated undertakings, in case the Commission is not a position to confirm that safeguards to protect the independence of the infrastructure manager have been effectively implemented.

**Safety and interoperability:** The Commission wants to cut the administrative costs of rail companies, facilitate the entrance of new operators into the market, reduce possibilities for discrimination and further harmonize interoperability and safety rules. The new proposals aim at extending the tasks of the European Railway Agency to simplify and streamline vehicle authorization and safety certification procedures to facilitate operations in more than one member State.

In order to achieve that, the Commission proposes a new Regulation on the European Railway Agency and amendments to Directive 2008/57/EC on the interoperability of the rail system within the Community (recast) and to Directive 2004/49/EC on safety on the Community's railways.

Source: Information provided by the European Commission.

4.132. In terms of trade regimes, the EU stayed unbound in GATS for the core of rail transport activities: passenger and freight transport. This reflected the former monopolistic structure of these activities and the fact that the liberalization process, which is essentially internal, has not yet been completed. However, already in the FTA with Korea and CARIFORUM, all EU member States (except for Bulgaria, where incorporation is required) liberalized these services for modes 2 and 3. In terms of the applied regime there are no ownership restrictions applicable in the area of rail transport since the generic rules of the Treaties on establishment apply. In the past, there have been examples of fully foreign-owned rail transport operators (e.g. EWS). Auxiliary services are largely committed both under GATS and FTAs. Table A4.11 describes in detail GATS and FTA commitments for the rail transport sector.

#### 4.3.3.3 Maritime transport services

4.133. Maritime transport is of major importance for the EU economy and trade since almost 90% of the external EU freight trade is seaborne, and short sea shipping represents 40% of intra-EU exchanges in terms of ton-kilometers.

4.134. Table 4.38 describes the fleets and tonnage registered under the national flag of the various member States or registered under a third-country flag but controlled by them ("beneficial ownership").

**Table 4.38 EU maritime fleets<sup>a</sup>, 1 January 2012**

Country of ownership <sup>b</sup>	Number of vessels			Deadweight tonnage				Estimated market share (%)
	National flag <sup>c</sup>	Foreign flag	Total	National flag <sup>c</sup>	Foreign flag	Total	Foreign flag as % of total	
Austria								
Belgium	97	180	277	6,319,103	8,202,208	14,521,311	56.48	1.04
Bulgaria				440,000				
Cyprus	62	152	214	2,044,256	5,092,849	7,137,105	71.36	0.51
Czech Republic								
Denmark	394	649	1,043	13,463,727	26,527,607	39,991,334	66.33	2.87
Estonia				86,000				
Finland				1,258,00				
France	188	297	485	3,430,417	7,740,496	11,170,913	69.29	0.80
Germany	422	3,567	3,989	17,296,198	108,350,510	125,626,708	86.23	9.03
Greece	738	2,583	3,321	64,921,486	159,130,395	224,051,881	71.02	16.10
Hungary								
Ireland				263,000				
Italy	608	226	834	18,113,984	6,874,748	24,988,732	27.51	1.80
Latvia				79,000				
Lithuania				325,000				
Luxembourg				1,231,000				
Malta								
Netherlands	576	386	962	4,901,301	6,799,943	11,701,244	58.11	0.84
Poland				73,000				
Portugal				1,236,000				
Romania				59,0000				
Slovakia				22,000				
Slovenia				1,000				
Spain				2,647,000				
Sweden	99	208	307	1,070,563	5,325,853	6,396,416	83.26	0.46
United Kingdom	230	480	710	2,034,570	16,395,185	18,429,755	88.96	1.32
<b>Total EU</b>	<b>3,414</b>	<b>8,728</b>	<b>12,142</b>	<b>140,588,605</b>	<b>350,439,794</b>	<b>484,015,399</b>	<b>72.40</b>	
<b>Total world</b>			<b>46,901</b>			<b>1,518,109,503</b>		

Country of ownership <sup>b</sup>	Number of vessels			Deadweight tonnage				Estimated market share (%)
	National flag <sup>c</sup>	Foreign flag	Total	National flag <sup>c</sup>	Foreign flag	Total	Foreign flag as % of total	
Total EU as % of world market			25.9			31.9		

- a Vessels of  $\geq 1,000$  GT, ranked by deadweight tonnage.
- b The country of ownership indicates where the true controlling interest (i.e. the parent company) of the fleet is located. In several cases, determining this has meant making certain judgements. Thus, for example, Greece is shown as the country of ownership for vessels owned by a Greek national with representative offices in New York, London, and Piraeus, although the owner may be domiciled in the United States.
- c Includes vessels flying the national flag but registered in second registries, such as the Danish International Ship Register (DIS) or the French International Ship Register (FIS).

Source: UNCTAD (2012), *Review of maritime transport 2012*, November. Viewed at: [http://unctad.org/en/PublicationsLibrary/rmt2012\\_en.pdf](http://unctad.org/en/PublicationsLibrary/rmt2012_en.pdf).

4.135. Table 4.39 details the tonnage of goods handled in 2010 in all EU harbours and singles out the high value container traffic, measured in container units (Twenty foot Equivalent Units).

**Table 4.39 Port traffic, 2010**

	Total merchandise traffic ('000 tonne)	Containerized port traffic (TEU)
Austria		350,461
Belgium	228,228	10,984,824
Bulgaria	22,946	142,611
Cyprus	6,954	349,357
Czech Republic	..	..
Denmark	87,068	709,147
Estonia	46,026	151,969
Finland	109,326	1,247,520
France	313,593	5,346,799
Germany	275,953	14,821,766
Greece	..	1,165,185
Hungary	..	..
Ireland	45,071	790,067
Italy	494,091	9,787,403
Latvia	58,691	256,713
Lithuania	37,869	294,954
Luxembourg	..	..
Malta	6,004	2,450,665
Netherlands	538,702	11,345,167
Poland	59,507	1,045,232
Portugal	65,981	1,622,246
Romania	38,122	556,694
Slovakia	..	..
Slovenia	14,591	476,731
Spain	376,391	12,613,000
Sweden	179,579	1,309,504
United Kingdom	511,875	8,590,282
<b>Total EU</b>	<b>3,516,568</b>	<b>86,408,297</b>
<b>Total EU as % of world market</b>	<b>..</b>	<b>16.0</b>
<b>Total world</b>	<b>..</b>	<b>540,693,109</b>

.. Not available.

Source: UNCTAD (2012), *Review of maritime transport 2012*, November. Viewed at: [http://unctad.org/en/PublicationsLibrary/rmt2012\\_en.pdf](http://unctad.org/en/PublicationsLibrary/rmt2012_en.pdf); and Eurostat database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/transport/data/database>.

4.136. Table 4.40 describes the regulatory framework of maritime transport in the EU and its planned evolutions.

**Table 4.40 EU regulatory framework for maritime transport services**

**Existing EU regulatory framework**

Market access:

Regulation EC/4055/86 on freedom to provide services to maritime transport between member States and between member States and third countries (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1986:378:0001:0003:EN:PDF>);  
Regulation EC/3577/92/EEC on freedom to provide services to maritime transport within member States (maritime cabotage) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1992:364:0007:0010:EN:PDF>);  
Regulation EC/4058/86 on coordinated action to safeguard free access to cargoes in ocean trades (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1986:378:0021:0023:EN:PDF>)

Anti-dumping: Regulation EC/4057/86 of 22 December 1986 on unfair pricing practices in maritime transport (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1986:378:0014:0020:EN:PDF>)

State aids: 2004 Community guidelines on state aid to maritime transport (Commission Communication C(2004) 43) (viewed at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC0117\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC0117(01):EN:NOT)), complemented by the Communication from the Commission providing guidance on state aid to ship-management companies (viewed at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0611\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0611(01):EN:NOT))

Antitrust:

Regulation EC/1419/2006 of 25 September 2006 repealing Regulation EC/4056/86 and hence the block exemption for liner conferences, and amending Regulation EC/1/2003 (the generic competition regulation) by extending its scope to include cabotage and international tramp services (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1419:EN:NOT>)  
Regulation (EC) No 246/2009 on consortia (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R0246:EN:NOT>)  
2008 Guidelines on the application of Article 81 of the EC Treaty to maritime transport services (viewed at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008XC0926\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008XC0926(01):EN:NOT))

Common external policy: in terms of legal instruments it is so far limited to a maritime agreement with China signed on 6 December 2002 which entered into force on 1 March 2008 (viewed at: <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=12968>)

**Main regulatory development since last TPR**

The following two Directives, adopted in 2012, are worth mentioning:  
Directive 2012/33/EU on Sulphur content of marine fuels (amending Directive 1999/32/EC) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:327:0001:0013:EN:PDF>)  
Directive 2012/35/EU on minimum level of training of seafarers (STCW Convention), amending Directive 2008/106/EC (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:343:0078:0105:EN:PDF>)

**On-going regulatory developments**

Review of the 2004 state aids guidelines: the public consultation of member States and stakeholders on the functioning of the guidelines took place between 14 February 2012 and 14 May 2012. The contributions to the public consultation are currently being assessed and on this basis it will be decided on the follow up of the review of the Guidelines on State aid to maritime transport.

Future of the 2008 maritime antitrust guidelines: a public consultation was undertaken from 4 May 2012 to 27 July 2012. These guidelines were adopted in 2008 to ensure a smooth transition to the application of the general antitrust rules to maritime transport. The contributions to the public consultation are currently being assessed. No decision has yet been made.

**European port policy:** a new European port policy was announced by the 2011 transport white paper (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0144:EN:NOT>).

In 2012, the Commission carried out an exhaustive stakeholders' consultation exercise for the review of the EU ports' policy. The results of the extended impact assessment and the Commission's proposal for action in this field will be presented to the European Parliament and Council before summer 2013. The main objectives of the review are the modernization and full integration of ports in the Trans-European Transport Network (TEN-T), achieving an attractive framework for investment and jobs in ports and ensuring the trade facilitation role of ports in the context of the economic recovery process. The Commission is also actively pursuing the provision of infrastructure for clean fuels in ports.

**Greenhouse gas emissions:** the Commission is preparing a legislative proposal for a monitoring, reporting and verification system as a first step in addressing greenhouse gas emissions from shipping. Discussions about further global measures are on-going at IMO level, including as regards intermediary steps to quickly deliver emissions reductions, such as energy efficiency measures for existing ships.

**Common external policy:** the negotiations of a maritime agreement with India are not progressing for the moment. However, the FTA negotiations with India take due account of maritime transport aspects.

Source: Information provided by the European Commission.

4.137. EU trade regimes for maritime transport services appear overall very open. EU GATS commitments are however somewhat limited. This is due to the withdrawal of the EU's extensive offer at the end of the 1995-1996 Negotiating Group on Maritime Transport Services (NGMTS) negotiations due to the lack of balance achieved. Actual EU commitments therefore essentially concern member States having joined the EU after 1996. The offer tabled by the EU in the context of the Doha Development Agenda is similar to the EU NGMTS offer and largely reflects the applied regime which is very liberal, except for cabotage which is not offered, while it has been liberalized intra-EU to EU flags.

4.138. The EU-CARIFORUM, EU-Chile, and EU-Korea FTAs contain extensive maritime transport commitments, with no restrictions regarding modes 1 and 2 for international freight (except Bulgaria and Romania for which modes 1 and 2 are unbound under EU-Chile). Additionally in EU-CARIFORUM in some member States committed feederage, subject to authorization. Mode 3 remains, as usual, unbound for the registration conditions and not subject to restrictions (except minor individual cases) for commercial presence onshore. All maritime auxiliary services are committed though with various regimes depending of the member State, the mode and the agreement concerned. The EU-Chile and EU-Korea FTAs also contain additional commitments in access to use of harbour services, while EU-Korea contains several members' state-level MFN exemptions (Finland and Sweden for cabotage, Germany for rental and leasing, Bulgaria for the UN liner code and cargo-sharing agreements and for reciprocity for cargo handling, and storage and warehousing) and EU-CARIFORUM refers to GATS MFN exemptions. Table A4.12 describes in detail GATS and FTA commitments for the maritime transport sector.

#### 4.3.3.4 Road transport services

4.139. Road transport is a major economic sector in the EU as its inter-modal share is 46.6% of total transport for freight and 73.8% for passengers (including passengers' cars). It employs 2 million persons directly and accounts for 2% of EU GDP. Table 4.41 describes, by member States, the fleets of vehicles and the volume of traffic for both freight and passenger traffic.

**Table 4.41 Road freight and passenger transport vehicle fleet and traffic, by member State, 2010**

	Road freight transport		Road passenger transport	
	Fleet (vans and lorries)	Volume (million tonne/km)	Fleet (buses and motor coaches)	Volume (million passenger/km)
Austria	396,788	16,539	9,648	..
Belgium	746,820	44,812	16,138	132,980
Bulgaria	..	19,453	23,857	10,613
Cyprus	120,690	44,812	3,403	..
Czech Republic	587,032	51,832	19,653	79,944
Denmark	485,166	10,573	14,496	67,499



	Road freight transport		Road passenger transport	
	Fleet (vans and lorries)	Volume (million tonne/km)	Fleet (buses and motor coaches)	Volume (million passenger/km)
Estonia	81,204	6,027	4,407	2,266
Finland	383,158	25,961	11,610	72,285
France	6,359,000	283,000	86,000	777,000
Germany	4,432,000	434,000	76,463	948,800
Greece	1,381,621	29,815	38,260	120,700
Hungary	451,321	33,721	17,641	72,044
Ireland	343,940	10,940	8,556	52,900
Italy	4,556,648	175,775	98,666	803,700
Latvia	71,575	10,590	5,377	14,288
Lithuania	133,921	19,398	13,261	17,308
Luxembourg	35,628	8,694	1,637	7,400
Malta	45,485	..	1,835	..
Netherlands	1,003,965	75,783	11,277	153,300
Poland	3,174,755	223,170	97,044	319,504
Portugal	109,727 <sup>a</sup>	34,640	..	94,300
Romania	667,219	25,889	40,877	87,500
Slovakia	296,511	27,411	9,360	31,388
Slovenia	89,219	14,762	2,400	28,800
Spain	5,103,980	210,068	62,445	392,500
Sweden	525,102	36,300	13,873	108,700
United Kingdom	3,678,000	146,685	171,000	700,300
<b>EU total</b>	<b>35,677,789</b>	<b>2,020,650</b>	<b>879,532</b>	<b>5,096,019</b>

.. Not available.

a Data for 2009.

Source: International Road Federation (2012), *IRF World Road Statistics 2012: Data 2005-2010*, Geneva.

4.140. Table 4.42 describes the market structure and regulatory framework of EU road transport services.

**Table 4.42 Market structure and regulatory framework of EU road transport services**

<b>Economic indicators</b>
Employment: 5 million (2011)
Contribution to EU GDP: 2% (2011)
Road freight transport split by type of operation (2011):
– National transport: 1,162 billion tonne-km (67%)
– International transport (without cabotage): 545 billion tonne-km (32%, of which 97% intra-EU, 3% extra-EU)
– Cabotage (i.e. transport within one country by vehicles registered in another country): 21 billion tonne-km (1%)
– Total: 1,728 billion tonne-km
Traffic: road freight (2010): 2,020,650 million tonne/km; road passenger (2010): 5,096,019 million passenger/km.
Fleet: road freight (2010): 35,677,789 vans and lorries; road passenger (2010): 879,532 buses and motor coaches.
<b>Existing regulatory regime (EU level)</b>
<u>Single road freight and passenger transport market</u> : Regulations 1071/2009 and 1072/2009, which entered into force on 4 December 2011 and replace Directive 96/26/EC, stipulate that to carry goods or passengers between member States, operators must fulfil four criteria, namely

good repute, sound financial standing – i.e. capital assets equivalent to €9,000 for the first vehicle and €5,000 for each additional vehicle – professional competence through the passing of a standard exam, and effective and stable establishment (viewed at: [http://europa.eu/legislation\\_summaries/transport/road\\_transport/index\\_en.htm](http://europa.eu/legislation_summaries/transport/road_transport/index_en.htm)).

National authorities carry out regular checks to ensure that operators continue to satisfy the four criteria. Operators fulfilling these criteria obtain a community licence from their own member State which allows them to carry out cross-border transport throughout the Union. A certified copy of the community licence must be carried in each of their vehicles. Drivers from non-EU countries must carry an attestation which certifies that they are legally employed by a licenced EU road-haulage operator.

Road charging system: the present EU road charging system is based on the "Eurovignette" directive. First adopted in 1999, it allows member States to levy a charge on heavy goods vehicles using trunk roads so as to pay for the maintenance and repair of the road infrastructure. An updated Eurovignette directive adopted in 2011, directive 2011/76/EU and which should be transposed at the latest by October 2013, also provides for an increased charge to take account of exhaust emissions and noise pollution. It applies the "polluter-pays" principle whereby cleaner trucks will pay less than those with higher exhaust emissions. The new legislation also authorizes national governments to charge higher tolls at peak times. It allows an extra toll charge in mountain areas under certain conditions, principally for the revenue to be invested in alternative route construction (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:269:0001:0016:EN:PDF>).

Passengers' rights: the EU adopted a new regulation, Regulation 181/2011 in February 2011, setting out for the first time a series of rights for passengers travelling long distances by coach or bus. This brings road transport in line with rail, air and sea travel where passengers already enjoy a series of rights. The Regulation will apply from March 2013. Subject to certain exceptions, this Regulation applies to passengers travelling with regular services where either the boarding or the arrival point is within the European Union (EU) and where the scheduled distance of the service is 250 km or more. The Regulation covers non-discrimination between passengers regarding transport conditions offered by carriers, rights of passengers in the event of accidents, non-discrimination and assistance for disabled persons and persons with reduced mobility, rights of passengers in case of cancellation or delay, minimum information to be provided to passengers, the handling of complaints and general rules on enforcement (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R0181:EN:NOT>).

Common external policy: the common external policy is somewhat limited as most international road transport relations are regulated by bilateral road transport agreements concluded at member-States level pending the inception of a global common external policy for road transport. Its main areas of applications are:

- EEA: full participation of the EEA countries (Iceland, Liechtenstein and Norway) to the EU single market.
- EU-Switzerland: traffic-wise, this agreement, signed on 21 June 1999 and entered into force on 1 June 2002, liberalizes road transport between the member States of the EU and Switzerland and opens up the market for transport between EU member States ("*grand cabotage*") to Swiss carriers. At the same time, cabotage in the strict sense of the word (i.e. road transport within Switzerland or within a member State of the EU) is not liberalized. The agreement does not affect triangular quotas for freight or existing cabotage rights for passenger transport. Finally, the agreement provides for mutual recognition of the licences needed to gain admission to the occupation, a general harmonization of technical standards, and coordination of transport policies, in particular where combined rail-road transport is concerned (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22002A0430%2803%29:EN:NOT>).
- AETR (European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport): through this agreement, the EU promotes its social rules in other European neighbouring countries, plus the Caucasus and Central Asia. The EU member States are among the 50 contracting parties to the AETR. The AETR has aligned its provisions for driving time, breaks and rest periods with current EU legislation. AETR countries have also introduced the digital tachograph which became compulsory in 2010 in vehicles involved in international transport (viewed at:

<http://www.unece.org/fileadmin/DAM/trans/doc/2010/sc1/ECE-TRANS-SC1-2010-AETR-en.pdf> and [http://www.unece.org/trans/conventn/legalinst\\_21\\_OLIRT\\_AETR.html](http://www.unece.org/trans/conventn/legalinst_21_OLIRT_AETR.html)).

- Interbus: the Interbus agreement on international occasional carriage of passengers by coach and bus facilitates passenger transport services between the EU and a number of third countries (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:321:0013:0043:EN:PDF>).

#### **Member state level external policy**

The WTO LIBRA database includes 530 agreements involving an EU member State and a third country (viewed at: [http://www.wto.org/english/tratop\\_e/serv\\_e/transport\\_e/transport\\_land\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/transport_e/transport_land_e.htm))

ECMT multilateral quotas: total EURO III safe lorries: 1,950; total EURO IV safe lorries: 1,080; and total EURO V safe lorries: 400. For individual member States, see Table 4.43

#### **On-going regulatory developments**

Single market: The Commission has taken note of the conclusions of the June 2012 High-Level Group on the internal market for road transport (viewed at: <http://ec.europa.eu/transport/modes/road/doc/2012-06-high-level-group-report-final-report.pdf>)

It is now carrying out its own assessment of the situation of the EU road-haulage market, as required under Article 17(3) of Regulation (EC) No 1072/2009. According to this text, the Commission must produce by the end of 2013 a report assessing the situation of the EU road-haulage market, so as to determine whether further opening of domestic markets can be envisaged. Based on first results, the situation seems to be appropriate for further opening, and a legislative proposal can be expected by mid-2013 along with the report on the situation of the market.

Road charging: An initiative on smart pricing has already been announced in the 2011 White Paper (initiative nr 39) (viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0144:EN:NOT>)

On the basis of the results of an Impact Assessment currently under preparation, the Commission will determine the nature and content of this initiative.

Weight and dimensions of vehicles: a review of current rules (40 or 44 tonnes when carrying a container for combined transport operations + specific member-State-level exceptions for heavier and longer vehicles to carry out specific tasks) has been announced. The European Commission is due to submit proposals in 2013 to adapt maximum dimensions of vehicles, taking into account factors like better aerodynamic performance, fuel consumption, emissions and the use of electric trucks with heavy batteries. The Commission will also consider the potential of new technology, and the promotion of intermodality for freight transport.

Enforcement of social regulations: on 19 July 2011, in order to further improve the efficiency of the tachograph system, the Commission adopted a legislative proposal amending the current tachograph regulation 3821/85. The reasons behind this initiative were to deter fraud and have greater control to increase the cost efficiency of the digital tachograph. It contains technical measures, such as the use of GNSS to record the starting and ending point of a journey, of remote communication solutions for filtering checks and of an intelligent transport system (ITS) standard interface. It also contains non-technical measures, like the new rules for approval and audit of workshops, common training methods for enforcement officers, new rules on sanctions and legal basis for the existing TACHO net system of exchange of information on driver cards or more flexibility for member States in granting the exemptions foreseen by Article 13 of Regulation 561/2006. The proposals are still under examination by the co-legislators.

#### **Common external policy:**

- The negotiations of a draft agreement between the EU and the Balkan States (Albania, Bosnia and Herzegovina, Croatia, Kosovo, FYROM, Montenegro, and Serbia) initiated in February 2010 are on-going. Their aim is to extend the single road transport market to other countries and to ensure regulatory convergence.
- The Interbus agreement on international occasional carriage of passengers by coach and bus facilitates passenger transport services between the EU and a number of third countries

(Albania, Bosnia-Herzegovina, Croatia, FYROM, Moldova, Montenegro, Turkey and Ukraine). In 2010 the European Commission submitted a recommendation to the Council in order to authorize the Commission to open negotiations to enlarge the scope of the Interbus agreement to include regular passenger transport. Despite the progress achieved, a final agreement on the issue has yet to be reached.

- In parallel, a similar proposal (the *Omnibus* agreement) has been discussed in the context of the UN-ECE, at expert group level. Given the overlapping of this proposal with the ongoing discussions within the EU, the Commission has not participated in the workings of the UN-ECE expert group.

Source: Information provided by the EU Commission.

4.141. Table 4.43 describes the breakdown by member States and by vehicle environmental category of licences accruing to EU member States for 2010 under the European Council of Ministers of Transport pan-European multilateral quota system.

**Table 4.43 Breakdown of EU member States ECMT<sup>a</sup> multilateral quotas, by vehicle environmental category, 2010**

	EURO III safe lorries			EURO IV safe lorries			EURO V safe lorries		
	Annual	Short term	Total	Annual	Short term	Total	Annual	Short term	Total
Austria				16		16			
Belgium	60		60	51		51	60		60
Bulgaria	76	15	91	50	16	66			
Cyprus	..	..	..	..	..	..	..	..	..
Czech Republic	124	17	141						
Denmark	76		76	38		38	18		18
Estonia	77	1	78	49	1	50			
Finland	25		25	25		25	20		20
France	130		130	82		82	40		40
Germany	264	10	274	12		12			
Greece	110		110	25		25	14		14
Hungary	79	21	100	41		41			
Ireland	10		10	6		6	5		5
Italy	67		67						
Latvia		21	21	97	10	107			
Lithuania	60	3	63	65		65			
Luxembourg	18	1	19	12		12	24		24
Malta	20		20	8		8	2		2
Netherlands	40		40	80		80	88		88
Poland	51		51	102		102			
Portugal	50	1	51	15		15	66		66
Romania	156		156	52		52			
Slovakia	85		85	43		43			
Slovenia	102		102	26		26			
Spain	74		74	75		75			
Sweden	73		73	50		50	30		30
United Kingdom	33		33	33		33	33		33
<b>Total</b>			<b>1,950</b>			<b>1,080</b>			<b>400</b>

.. Not available.

a European Council of Ministers of Transport.

Source: WTO document S/C/W/324, 29 October 2010.

4.142. The road transport sector is essentially regulated at member-State level and covers a multitude of different segments: taxis, vehicle rental, urban collective transport, road freight transport, coaches, and various auxiliary services such as toll roads and maintenance of vehicles to name a few. It is therefore impossible to describe in any detail their trade regimes in a few lines,

let alone to compare the GATS trade regime, FTA trade regimes, the other preferential regimes (international road transport being by excellence a sector regulated by bilateral sectoral agreements) and finally the applied regime.

4.143. Table A4.13 attempts nevertheless to do so partially for GATS and FTA commitments. The overlapping picture is that the core of sector (transport activities, strictly speaking) is in general not committed for international transport and subject to numerous authorization procedures for mode 3, while auxiliary services appear more largely committed. There are no substantial differences between the GATS and FTA commitments though the FTA commitments appear slightly more liberal.

4.144. In terms of applied regime, one should distinguish between international transport (both passenger and freight), cabotage and the establishment regime. International transport is regulated by a series of bilateral agreements concluded so far quasi-uniquely at member-State level and based on reciprocity. The WTO LIBRA database contains the text of over 500 agreements signed by individual member States with third parties. Regarding cabotage it has been liberalized intra-EU to the benefit of EU flags within the limit of three consecutive voyages following an international trip. Finally there are no EU-level foreign-ownership restrictions, the sector abiding to the general rules of the treaties on establishment.

#### 4.3.4 Pipeline services

4.145. Table 4.44 describes the main economic indicators of the EU oil pipeline transport sector.

**Table 4.44 Main economic indicators of the EU pipeline transport sector, 2011**

	Oil pipelines (km)	Cross-border oil pipelines ('000 tonnes/day)		Gas pipelines (km)	Cross-border gas pipelines (mcm/day)	
		To	From		To	From
Austria	595.5	42.0		1,600.0	170.2	172.2
Belgium	771.0			4,040.0	337.9	216.2
Bulgaria	680.0	1,376.9		2,645.0	71.5	51.2
Cyprus						
Czech Republic	1,774.3			3,640.0	223.5	192.5
Denmark	517.0			832.0		16.9
Estonia						
Finland				1,154.0		22.5
France	9,211.0	213.7		937.0	29.0	183.3
Germany	4,871.5	208.0		31,515.0	231.2	495.4
Greece	103.0		6.5	1,232.0		20.6
Hungary	1,270.0	64.6	28.5	5,783.0	83.0	35.3
Ireland				1,873.0	8.2	27.7
Italy	2,618.0			8,894.0	293.1	14.3
Latvia				1,281.0	9.0	19.8
Lithuania				1,868.0	15.1	27.1
Luxembourg				411.0		6.3
Malta						
Netherlands		4.0		11,500.0	317.9	128.0
Poland	147.4			10,409.0	201.2	17.0
Portugal				1,299.0	13.2	7.4
Romania	873.0			13,642.0	39.4	
Slovakia	1,032.0	54.8	35.3	500.6	313.9	340.3
Slovenia				1,018.0	9.2	4.8
Spain				9,984.0	18.5	67.4
Sweden				620.0		8.7
United Kingdom	6,709.0			8,380.0	82.7	240.4
<b>Total</b>	<b>31,172.7</b>	<b>1,964.0</b>	<b>70.3</b>	<b>125,027.6</b>	<b>2,467.8</b>	<b>2,315.2</b>

Source: European Commission document SWD(2012) 367, 15 November 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0367:FIN:EN:PDF>.

4.146. Table 4.45 describes the regulatory framework that prevailed during the period under review as well as the main regulatory change that has intervened during this period, the implementation of the so-called "third energy package".

**Table 4.45 EU regulatory framework for pipelines services**

**Existing legislation during the period under review (so called "second energy package")**

Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC

Date of adoption: 23 June 2003

Deadline for transposition: July 2007

Reference: [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:176:0057:0057:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:176:0057:0057:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:176:0057:0057:EN:PDF)

Main provisions:

- Definition of the public services obligations where member States may impose undertakings relating to security, including security of supply, regularity, quality and price of supplies, and environmental protection including energy efficiency and climate protection.
- Imposition of a system of authorizations based on public, objective and non-discriminatory criteria for undertakings applying for an authorization to build and/or operate natural gas facilities or applying for an authorization to supply natural gas.
- Publication of the technical rules ensuring interoperability of network systems.
- Unbundling of transmission system operators. Where the transmission-system operator is part of a vertically integrated undertaking, it has to be independent at least in terms of its legal form, organization and decision-making from other activities not related to transmission. These rules shall not create an obligation to separate the ownership of assets of the transmission system from the vertically integrated undertaking.
- Rules on unbundling and transparency of accounts.
- Rules on third party access to transmission systems based on published tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users (these obligations may be waived under certain conditions for new infrastructures in order to encourage investment).
- Establishment of independent regulatory authorities.
- Safeguard measures.

Regulation (EC) No. 1775/2005 on conditions for access to the natural gas transmission networks

Date of adoption: 28 September 2005

Date of implementation: 1 July 2006

Reference: [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0001:0001:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0001:0001:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0001:0001:EN:PDF)

Main provisions:

- Setting of harmonized principles for tariffs, or the methodologies underlying their calculation, for access to the network.
- Establishment of third-party access services and harmonized principles for capacity allocation and congestion management.
- Determination of transparency requirements, balancing rules and imbalance charges, and facilitating capacity trading.

**Regulatory changes implemented during the period under review (so called "third energy package")**



Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

Date of adoption: 13 July 2009

Deadline for transposition: 3 March 2011, except for Article 11 of the directive (relating to the certification of transmission system owners or transmission system operators which are controlled by a person or persons from a third country or third countries), 3 March 2013

Reference: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0094:0136:en:PDF>

Main provisions:

- Reinforcement of the unbundling provisions of the previous package through the definition of three possible models of unbundling, subject to various level of disciplines and monitoring:

Model 1: Ownership Unbundling (OU): if a member State decides to impose full ownership unbundling, all integrated energy companies would have to give up their rights in either energy supply or networks. In this case, no supply and production company would be allowed to control a transmission system operator, nor exercise voting rights or appoint board members. Supply and production companies are free to decide to whom and at what price they sell their networks.

Model 2: Independent System Operator (ISO): under this model, the supply company can still own the physical network, but it has to leave the entire operation, maintenance and investment decisions to an independent company which operates the network. It is subject to stricter regulation and permanent monitoring (e.g. its investment planning has to be approved the National regulatory Authority).

Model 3: Independent Transmission System Operator (ITO): under this model, the supply company can own and operate the network. The management of the network must be done by a subsidiary of the parent company, which can make all financial, technical and other decisions independently from the parent company. It is subject to heavy regulation and to permanent monitoring so as to avoid conflicts of interests.

- institution of a designation and certification system to ensure compliance with the unbundling requirements above with a specific procedure to take into account the situation of transmission system owner or a transmission system operator controlled by a person or persons from a third country or third countries, with a specific role for the Commission (Article 11.5 to 11.7) a specific criteria (security of energy supply of the Community, Article 11.3.b), and a deferred date of implementation (3 March 2013, Article 54.1).
- Regarding third-party access, the principle did not change in comparison with Second Package however the Third-Party Access is applied more consistently and non-discriminatory in the view of the network codes for access to infrastructure (see below) .

Regulation (EC) No. 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005

Date of adoption: 13 July 2009

Date of implementation: 3 March 2011

Reference: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF>

Main provisions:

- Establishment of a new European Network for Transmission System Operators (ENTSO) that will bring together EU electricity and gas grid operators to cooperate and develop common commercial and technical codes and security standards in order to ensure better cross-border collaboration and investment.
- ENTSO "Network codes" in accordance with the principles that ACER (the Agency for the Cooperation of Energy Regulators, an independent regulatory agency, common to the gas and electricity sectors established by a separate regulation) are set out in "framework guidelines". The network codes are rules which regulate how networks are operated. These rules address aspects of network security and interconnection, as well as access of persons other than the owners of such an infrastructure ("third party access"). Network codes can be

made legally binding by a separate Commission decision.

- Regarding third-party access the network codes, in particular network codes on capacity allocation and congestion management, EU-wide auctions are held for capacity of networks and non-discriminatory rules for network access.

Source: Information provided by the European Commission.

4.147. EU commitments regarding pipeline transport services appear limited both under GATS and in FTAs (Table A4.14). Under GATS, the key modes for the provision of these services' mode 1 and mode 3 are unbound for all members States both for transport of fuels and transport of goods other than fuels, except in Lithuania where there are no restrictions for mode 3, and in Hungary where mode 3 provision is subject to a concession contract.

4.148. The FTA containing pipeline commitments (EU-CARIFORUM, EU-Korea, and EU-Chile) echo the GATS reservation, except for mode 3 for pipeline transport of goods other than fuel in the EU-CARIFORUM and EU-Korea regime, where there are no restrictions, except in Austria (nationality or residency obligation to obtain exclusive rights). The EU-level applied regime, both for EU and third party providers is described above in the regulatory framework table (Table 4.45).

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## 5 APPENDIX TABLES

Table A1. 1 Key economic indicators, 2010-12

	Real GDP growth rate - volume (% change on previous year)			Inflation rate (HICP annual average rate of change) (%)			Unemployment (% of labour force)			General government gross debt (% of GDP)			General government balance (% of GDP)			External current account balance (% of GDP)		
	2010	2011	2012	2010	2011	2012	2010	2011	2012 <sup>a</sup>	2010	2011	2012	2010	2011	2012	2010	2011	2012
EU-27	2.1	1.65	-0.3	2.1	3.1	2.6	9.7	9.7	10.5	80.0	82.5	..	-6.5	-4.4	..	-0.5	-0.2	..
Austria	2.1	2.7	0.8	1.7	3.6	2.6	4.4	4.2	4.4	72.0	72.4	..	-4.5	-2.5	..	3.4	0.6	..
Belgium	2.4	1.8	-0.2	2.3	3.4	2.6	8.3	7.2	7.3	95.5	97.8	..	-3.8	-3.7	..	1.9	-1.4	..
Bulgaria	0.4	1.8	0.8	3.0	3.4	2.4	10.3	11.3	12.2	16.2	16.3	..	-3.1	-2.0	..	-1.5	0.3	..
Cyprus	1.3	0.5	-2.4	2.6	3.5	3.1	6.5	7.9	12.1	61.3	71.1	..	-5.3	-6.3	..	-9.8	-4.7	..
Czech Republic	2.5	1.9	-1.3	1.2	2.1	3.5	7.3	6.7	7.0	37.8	40.8	..	-4.8	-3.3	..	-3.9	-2.9	..
Denmark	1.6	1.1	-0.6	2.2	2.7	2.4	7.5	7.6	7.5	42.9	46.6	..	-2.5	-1.8	..	5.9	5.6	..
Estonia	3.3	8.3	3.2	2.7	5.1	4.2	16.9	12.5	10.1	6.7	6.1	..	0.2	1.1	..	2.9	2.1	..
Finland	3.3	2.8	-0.2	1.7	3.3	3.2	8.4	7.8	7.7	48.6	49.0	..	-2.5	-0.6	..	1.5	-1.6	..
France	1.7	1.7	0.0 <sup>b</sup>	1.7	2.3	2.2	9.7	9.6	10.2	82.3	86.0	..	-7.1	-5.2	..	-1.6	-2.0	..
Germany	4.2	3.0	0.7	1.2	2.5	2.1	7.1	5.9	5.5	82.5	80.5	..	-4.1	-0.8	..	6.0	5.7	..
Greece	-4.9 <sup>c</sup>	-7.1 <sup>c</sup>	-6.4 <sup>c</sup>	4.7	3.1	1.0	12.6	17.7	24.3	148.3	170.6	..	-10.7	-9.4	..	-10.1	-9.9	..
Hungary	1.3	1.6	-1.7	4.7	3.9	5.7	11.2	10.9	10.9	81.8	81.4	..	-4.4	4.3	..	1.1	0.9	..
Ireland	-0.8	1.4	0.7 <sup>b</sup>	-1.6	1.2	1.9	13.9	14.7	14.9	92.2	106.4	..	-30.9	-13.4	..	1.1	1.1	..
Italy	1.7	0.4	-2.4	1.6	2.9	3.3	8.4	8.4	10.6	119.2	120.7	..	-4.5	-3.9	..	-3.5	-3.1	..
Latvia	-0.9 <sup>d</sup>	5.5 <sup>d</sup>	5.6	-1.2	4.2	2.3	19.8	16.2	14.9	44.5	42.2	..	-8.1	-3.4	..	2.9	-2.1	..
Lithuania	1.5	5.9	3.6	1.2	4.1	3.2	18.0 <sup>a</sup>	15.3	13.3	37.9	38.5	..	-7.2	-5.5	..	0.1	-3.7	..
Luxembourg	2.9	1.7	0.2 <sup>b</sup>	2.8	3.7	2.9	4.6	4.8	5.0	19.2	18.3	..	-0.8	-0.3	..	8.2	7.1	..
Malta	2.9	1.7	0.8	2.0	2.5	3.2	6.9	6.5	6.5	68.3	70.9	..	-3.6	-2.7	..	-4.9	-0.3	..
Netherlands	1.6	1.0	-0.9	0.9	2.5	2.8	4.5	4.4	5.3	63.1	65.5	..	-5.1	-4.5	..	7.7	9.7	..
Poland	3.9	4.3	2.0	2.7	3.9	3.7	9.7	9.7	10.1	54.8	56.4	..	-7.9	-5.0	..	-5.1	-4.9	..
Portugal	1.9	-1.6	-3.2	1.4	3.6	2.8	12.0 <sup>a</sup>	12.9	15.9	93.5	108.1	..	-9.8	-4.4	..	-10.6	-7.0	..
Romania	-1.1	2.2	0.3	6.1	5.8	3.4	7.3	7.4	7.0	30.5	33.4	..	-6.8	-5.5	..	-4.4	-4.6	..
Slovakia	4.4	3.2	2.0	0.7	4.1	3.7	14.5	13.6	14.0	41.0	43.3	..	-7.7	-4.9	..	-3.7	-2.1	..
Slovenia	1.2	0.6	-2.3	2.1	2.1	2.8	7.3	8.2	9.0	38.6	46.9	..	-5.7	-6.4	..	-0.6	0.0	..
Spain	-0.3	0.4	-1.4 <sup>b</sup>	2.0	3.1	2.4	20.1	21.7	25.1	61.5	69.3	..	-9.7	-9.4	..	-4.5	-3.5	..
Sweden	6.6	3.7	0.8	1.9	1.4	0.9	8.6	7.8	8.0	39.5	38.4	..	0.3	0.4	..	6.8	7.1	..
United Kingdom	1.8	0.9	0.2	3.3	4.5	2.8	7.8	8.0	7.9	79.4	85.0	..	-10.2	-7.8	..	-3.3	-1.4	..

.. Not available.

a Estimate.

b Forecast.

c Provisional.

d Break in time series.

Note: Data related to 2012 unemployment rate (estimates) are provided by European Commission.

Source: Eurostat online database. Viewed at <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> [March 2013].

**Table A1. 2 Structure of imports, 2009-12**

(€ billion and %)

	2009	2010	2011	2012
<b>Total (€ billion)</b>	<b>1,234.2</b>	<b>1,530.5</b>	<b>1,721.7</b>	<b>1,791.4</b>
	(%)			
Primary products	35.7	37.3	41.2	42.2
Agricultural products	8.2	7.6	7.8	7.5
Food	6.9	6.1	6.2	6.2
Fish	1.2	1.1	1.1	1.0
Other food products and live animals	5.7	5.0	5.2	5.2
Raw materials	1.3	1.5	1.5	1.4
Fuels and mining products	27.5	29.8	33.4	34.6
Ores and other minerals	1.6	2.3	2.5	2.2
Fuels	24.1	25.0	28.4	30.5
Petroleum and petroleum products	17.1	18.7	21.6	23.5
Other fuels	7.0	6.3	6.8	7.0
Non-ferrous metals	1.8	2.4	2.5	2.0
Manufactures	59.9	59.3	55.5	53.8
Iron and steel	1.5	1.7	2.0	1.5
Chemicals	9.1	9.0	9.0	9.0
Pharmaceuticals	3.5	3.1	3.1	3.2
Plastics	1.0	1.1	1.1	1.1
Other chemicals	4.6	4.7	4.8	4.7
Other semi-manufactures	4.8	4.9	5.0	4.7
Machinery and transport equipment	28.6	29.2	25.7	25.2
Office and telecommunication equipment	11.6	12.6	10.5	10.0
Electronic data processing and office equipment	4.6	4.9	4.1	4.1
Telecommunications equipment	5.1	4.9	4.3	4.4
Integrated circuits and electronic components	2.0	2.8	2.2	1.5
Transport equipment	7.5	7.3	5.9	6.0
Automotive products	3.1	2.9	2.8	2.7
Other transport equipment	4.4	4.4	3.1	3.3
Other machinery	9.4	9.3	9.3	9.2
Power generating machinery	2.0	1.8	1.7	1.9
Non electrical machinery	3.8	3.7	3.9	3.8
Electrical machinery	3.7	3.8	3.6	3.6
Textiles	1.3	1.3	1.3	1.2
Clothing	5.0	4.4	4.3	3.9
Other manufactures	9.6	8.9	8.3	8.3
Personal and household goods	2.4	2.3	2.1	2.1
Scientific and controlling instruments	2.1	1.9	1.9	1.9
Miscellaneous manufactures	5.1	4.7	4.3	4.3
Other products	4.4	3.3	3.2	4.0

Source: Information provided by European Commission (SITC Rev. 4).

**Table A1. 3 Origin of imports, 2009-12**

(€ billion and %)

	2009	2010	2011	2012
<b>Total (€ billion)</b>	<b>1,234.2</b>	<b>1,530.5</b>	<b>1,721.7</b>	<b>1,791.4</b>
	(%)			
<b>America</b>	<b>20.3</b>	<b>19.4</b>	<b>19.6</b>	<b>19.7</b>
United States	12.5	11.3	11.1	11.5
Other America	7.7	8.0	8.5	8.2
Brazil	2.1	2.2	2.3	2.1
Canada	1.6	1.6	1.8	1.7
Mexico	0.8	0.9	1.0	1.1
<b>Europe</b>	<b>16.3</b>	<b>14.7</b>	<b>14.9</b>	<b>15.3</b>
EFTA	12.4	11.0	11.1	11.7
Switzerland	6.6	5.6	5.5	5.9
Norway	5.6	5.2	5.4	5.6
Other Europe	3.9	3.7	3.8	3.6
Turkey	2.9	2.8	2.8	2.7
<b>Commonwealth of Independent States (CIS)</b>	<b>12.1</b>	<b>13.3</b>	<b>15.0</b>	<b>15.3</b>
Russian Federation	9.6	10.5	11.6	11.9
Kazakhstan	0.9	1.0	1.3	1.4
<b>Africa</b>	<b>9.1</b>	<b>8.9</b>	<b>8.7</b>	<b>10.4</b>
Nigeria	0.8	0.9	1.4	1.8
Libyan Arab Jamahiriya	1.7	1.9	0.6	1.8
Algeria	1.4	1.4	1.6	1.8
South Africa	1.6	1.3	1.2	1.1
<b>Middle East</b>	<b>4.0</b>	<b>4.7</b>	<b>5.8</b>	<b>5.2</b>
Kingdom of Saudi Arabia	1.0	1.1	1.6	1.9
<b>Asia</b>	<b>36.9</b>	<b>37.8</b>	<b>35.2</b>	<b>33.3</b>
China	17.4	18.5	17.1	16.2
Japan	4.7	4.4	4.0	3.6
Six East Asian traders	8.7	8.8	7.5	7.2
Korea, Rep. of	2.6	2.6	2.1	2.1
Chinese Taipei	1.4	1.6	1.4	1.3
Singapore	1.2	1.2	1.1	1.2
Malaysia	1.2	1.4	1.2	1.1
Thailand	1.2	1.1	1.0	0.9
Other Asia	6.1	6.1	6.6	6.4
India	2.1	2.2	2.3	2.1
Viet Nam	0.6	0.6	0.8	1.0
<b>Other</b>	<b>1.4</b>	<b>1.3</b>	<b>0.7</b>	<b>0.8</b>

Source: WTO Secretariat calculations, based on Eurostat data and information provided by the European Commission.

**Table A1. 4 Structure of exports, 2009-12**

(€ billion and %)

	2009	2010	2011	2012
<b>Total (€ billion)</b>	<b>1,099.7</b>	<b>1,356.6</b>	<b>1,558.9</b>	<b>1,686.3</b>
	(%)			
Primary products	14.7	15.5	16.7	17.5
Agricultural products	7.3	7.2	7.4	7.6
Food	6.0	5.9	6.0	6.2
Fish	0.2	0.2	0.2	0.2
Other food products and live animals	5.7	5.7	5.8	6.0
Raw materials	1.3	1.3	1.3	1.4
Fuels and mining products	7.4	8.3	9.4	10.0
Ores and other minerals	1.0	1.2	1.2	1.2
Fuels	5.2	5.6	6.5	7.3
Petroleum and petroleum products	4.8	5.2	6.0	6.8
Other fuels	0.4	0.4	0.5	0.5
Non-ferrous metals	1.3	1.5	1.7	1.5
Manufactures	82.0	80.8	79.1	79.4
Iron and steel	2.7	2.5	2.7	2.5
Chemicals	17.9	17.2	16.4	16.4
Pharmaceuticals	7.3	6.9	6.6	6.7
Plastics	2.3	2.4	2.3	2.2
Other chemicals	8.2	7.9	7.5	7.5
Other semi-manufactures	7.5	7.4	7.2	7.1
Machinery and transport equipment	42.0	42.2	41.7	41.9
Office and telecommunication equipment	5.9	5.6	5.2	4.8
Electronic data processing and office equipment	2.0	1.8	1.6	1.6
Telecommunications equipment	2.7	2.7	2.6	2.3
Integrated circuits and electronic components	1.2	1.1	1.0	0.9
Transport equipment	13.7	15.5	15.6	16.5
Automotive products	8.0	9.9	10.5	11.0
Other transport equipment	5.7	5.6	5.2	5.4
Other machinery	22.0	20.9	20.7	20.6
Power generating machinery	3.5	3.2	3.0	3.1
Non electrical machinery	13.5	12.9	13.2	12.9
Electrical machinery	5.0	4.8	4.6	4.5
Textiles	1.2	1.2	1.1	1.0
Clothing	1.4	1.2	1.3	1.3
Other manufactures	9.3	8.9	8.7	9.0
Personal and household goods	1.7	1.6	1.6	1.7
Scientific and controlling instruments	3.0	3.0	2.9	3.0
Miscellaneous manufactures	4.5	4.4	4.2	4.4
Other products	3.3	3.8	4.2	3.1

Source: Information provided by European Commission (SITC Rev. 4).

**Table A1. 5 Destination of exports, 2009-12**

(€ billion and %)

	2009	2010	2011	2012
<b>Total (€ billion)</b>	<b>1,099.7</b>	<b>1,356.6</b>	<b>1,558.9</b>	<b>1,686.3</b>
	(%)			
<b>America</b>	<b>26.7</b>	<b>26.7</b>	<b>25.6</b>	<b>26.2</b>
United States	18.5	17.9	16.9	17.3
Other America	8.2	8.8	8.6	8.9
Brazil	2.0	2.3	2.3	2.3
Canada	2.0	2.0	1.9	1.9
Mexico	1.5	1.6	1.5	1.7
<b>Europe</b>	<b>18.5</b>	<b>18.4</b>	<b>19.4</b>	<b>18.0</b>
EFTA	11.7	11.4	12.1	11.0
Switzerland	8.2	8.2	9.0	8.0
Norway	3.4	3.1	3.0	3.0
Other Europe	6.8	7.0	7.3	7.0
Turkey	4.0	4.5	4.7	4.5
<b>Commonwealth of Independent States (CIS)</b>	<b>8.7</b>	<b>9.1</b>	<b>9.8</b>	<b>10.2</b>
Russian Federation	6.0	6.3	6.9	7.3
Ukraine	1.3	1.3	1.4	1.4
<b>Africa</b>	<b>9.9</b>	<b>9.3</b>	<b>8.8</b>	<b>9.0</b>
South Africa	1.5	1.6	1.7	1.6
Algeria	1.3	1.1	1.1	1.2
Morocco	1.1	1.0	1.0	1.0
<b>Middle East</b>	<b>8.5</b>	<b>7.8</b>	<b>7.5</b>	<b>7.4</b>
United Arab Emirates	2.3	2.1	2.1	2.2
Kingdom of Saudi Arabia	1.7	1.7	1.7	1.8
Israel	1.0	1.1	1.1	1.0
<b>Asia</b>	<b>25.4</b>	<b>26.8</b>	<b>27.0</b>	<b>27.0</b>
China	7.5	8.3	8.7	8.5
Japan	3.3	3.2	3.1	3.3
Six East Asian traders	8.1	8.6	8.4	8.7
Korea, Rep. of	2.0	2.1	2.1	2.2
Hong Kong, China	1.8	2.0	2.0	2.0
Singapore	1.9	1.8	1.7	1.8
Other Asia	6.6	6.6	6.7	6.5
India	2.5	2.6	2.6	2.3
Australia	2.0	2.0	2.0	2.0
<b>Other</b>	<b>2.3</b>	<b>1.9</b>	<b>2.0</b>	<b>2.1</b>

Source: WTO Secretariat calculations, based on Eurostat data and information provided by European Commission.

Table A2. 1 Selected EU legislation

Scope	Legislation
<b>Customs</b>	
Combined Nomenclature, Common Customs Tariff, and Integrated Tariff of the European Communities (Taric)	Council Regulation (EEC) No. 2658/87
Customs Code	Council Regulation (EEC) No. 2913/92
Customs Code's implementing provisions	Commission Regulation (EEC) No. 2454/93
<b>External trade</b>	
<b>Exports</b>	
Ban on trade in instruments of torture	Council Regulation (EC) No. 1236/2005
Common rules for export	Council Regulation (EC) No. 1061/2009
Control of exports, transfer, brokering, and transit of dual-use items	Council Regulation (EC) No. 428/2009
Export credit insurance	Council Directive No. 98/29/EC
Export of cultural goods	Council Regulation (EC) No. 116/2009
<b>Imports</b>	
Common rules for import	Council Regulation (EC) No. 260/2009
Common rules for imports from certain non-EU member States	Council Regulation (EC) No. 625/2009
Procedure for administering quantitative quotas	Council Regulation (EC) No. 717/2008
Trade in seal products	Regulation (EC) No. 1007/2009
<b>Contingency measures</b>	
Anti-dumping measures	Council Regulation (EC) No. 1225/2009
Anti-subsidy measures	Council Regulation (EC) No. 597/2009
Protection against subsidies and unfair pricing practices which cause injury in the air transport sector	Regulation (EC) No. 868/2004
Protection against trade barriers	Council Regulation (EC) No. 3286/94
<b>Multilateral trade framework</b>	
Adoption of the WTO Agreements	Council Decision No. 94/800/EC
Aspects of intellectual property rights	Council Decision No. 94/800/EC
Aspects relating to trade in goods	Council Decision No. 94/800/EC
Aspects relating to trade in services	Council Decision No. 94/800/EC
<b>Consumer protection</b>	
Food and feed safety	Regulation (EC) No. 178/2002
Genetically modified food and feed	Regulation (EC) No. 1829/2003
Product safety	Directive No. 2001/95/EC
<b>Competition</b>	
Competition rules (agricultural products)	Council Regulation (EC) No. 1184/2006
Competition rules (firms)	Council Regulation (EC) No. 1/2003
Competition rules (maritime transport)	Council Regulation (EEC) No. 4055/86
Competition rules (rail, road, and inland waterway transport)	Council Regulation (EC) No. 169/2009
Competition rules (state aid)	Council Regulation (EC) No. 659/1999
<b>Intellectual property rights</b>	
Biotechnological inventions	European Parliament and Council Directive No. 98/44/EC
Community design	Council Regulation (EC) No. 6/2002
Community trade mark	Council Regulation (EC) No. 207/2009
Copyright and related rights	Directive No. 2006/116/EC
Enforcement of intellectual property rights	Directive No. 2004/48/EC
Topographies of semiconductor products	Council Directive No. 87/54/EEC
<b>Procurement</b>	
Public procurement in the fields of defence and security	Directive No. 2009/81/EC
Public procurement in the water, energy, transport, and postal services sectors	Directive No. 2004/17/EC
Public works contracts, public supply contracts, and public service contracts	Directive No. 2004/18/EC



Scope	Legislation
<b>Taxation: corporate tax</b>	
Common system of taxation applicable in the case of parent companies and subsidiaries of different member States	Directive No. 2011/96/UE
Common system of taxation applicable to interest and royalty payments made between associated companies of different member States	Council Directive No. 2003/49/EC
<b>Taxation: excise duty</b>	
Excise duty on alcohol and alcoholic beverages	Council Directive No. 92/83/EEC Council Directive No. 92/84/EEC Council Regulation No. 3199/93
Excise duty on energy products and electricity	Council Directive No. 2003/96/EC
Excise duty on gas oils and kerosene	Council Directive No. 95/60/EC
Excise duty on manufactured tobacco	Council Directive No. 2011/64/EU
General arrangements for excise duty	Council Directive No. 2008/118/EC Commission Regulation (EC) No. 684/2009
<b>Taxation: VAT</b>	
Common System of Value Added Tax	Directive No. 2006/112/EC Council Implementing Regulation (EU) No. 282/2011
<b>Agriculture</b>	
Agricultural product nomenclature for export refunds	Commission Implementing Regulation (EC) No. 1253/2012
Common organisation of agricultural markets and specific provisions for certain agricultural products	Council Regulation (EC) No. 1234/2007
Common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers	Council Regulation (EC) No. 73/2009
<b>Fisheries</b>	
Common fisheries policy	Council Regulation (EC) No. 2371/2002
<i>De minimis</i> aid for the fisheries sector	Commission Regulation (EC) No. 875/2007
State aid for SMEs in the fisheries sector	Commission Regulation (EC) No. 736/2008
<b>Energy</b>	
Common rules for the internal market in electricity	Directive No. 2009/72/EC
Common rules for the internal market in gas	Directive No. 2009/73/EC
<b>Transport (road)</b>	
Common rules for access to the international market for coach and bus services	Regulation (EC) No. 1073/2009
Common rules for access to the international road haulage market	Regulation (EC) No. 1072/2009
<b>Transport (air)</b>	
Common rules for the operation of air services	Regulation (EC) No 1008/2008

Source: Europa Summaries of EU Legislation online information. Viewed at: [http://europa.eu/legislation\\_summaries/index\\_en.htm](http://europa.eu/legislation_summaries/index_en.htm); EUR-Lex online information. Viewed at: <http://eur-lex.europa.eu/>; and European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/index_en.htm).

**Table A2. 2 Selected notifications to the WTO, January 2011-March 2013**

Legal provision	Description of requirement	Frequency	WTO document
<b>General Agreement on Tariffs and Trade 1994</b>			
Article XXVIII:5	Reservation of rights to modify schedule	Ad hoc	G/MA/254, 3 December 2011
Article XVII:4(a) and paragraph 1 of the Understanding on the Interpretation of Article XVII	State-trading enterprises and products traded by them	Every two years (new and full notifications)	G/STR/N/13/EU, 17 October 2012 G/STR/N/14/EU, 17 October 2012
Article XXIV:7(a)	Customs unions and free-trade areas	Ad hoc	WT/REG333/N/1/Rev.1, 21 March 2013 WT/REG333/N/1, 27 February 2013 WT/REG332/N/1, 27 February 2013 WT/REG307/N/1, 10 February 2012 WT/REG302/N/1, 19 October 2011 WT/REG296/N/1, 8 July 2011
<b>Agreement on Agriculture</b>			
Article 18.2	Imports under tariff quotas (Table MA:2)	Annual	G/AG/N/EU/12, 13 December 2012 (covers the marketing years 2009/10 and 2010/11 and the calendar years 2010 and 2011) G/AG/N/EEC/67, 18 January 2011 (covers the marketing year 2008/09 and the calendar year 2009)
Article 5.7 and 18.2	Special safeguard (Table MA:5)	Annual	G/AG/N/EU/9, 31 October 2012 (covers the marketing year 2010/11) G/AG/N/EU/5, 24 February 2012 (covers the marketing year 2009/10) G/AG/N/EEC/66, 12 January 2011 (covers the marketing year 2008/09)
Article 18.2 and 18.3	Domestic support	Annual/ad hoc (DS:1, and DS:2)	G/AG/N/EU/11, 20 November 2012 G/AG/N/EU/10, 19 November 2012 (covers the marketing year 2009/10) G/AG/N/EU/8, 3 April 2012 G/AG/N/EU/7, 2 April 2012 (covers the marketing year 2008/09) G/AG/N/EEC/69, 24 January 2011 G/AG/N/EEC/68, 24 January 2011 (covers the marketing year 2007/08)
Article 18.2	Export subsidies (Tables ES:1, ES:2, and ES:3)	Annual	G/AG/N/EU/6, 15 March 2012 (covers the marketing years 2009/10) G/AG/N/EEC/70, 16 March 2011 (covers the marketing years 2008/09)
Article 16.2	Possible negative effects of the reform programme on least-developed and net food-importing developing countries	Annual	G/AG/N/EU/4, 21 February 2012 (covers the calendar year 2009) G/AG/N/EU/3, 17 February 2012 (covers the calendar year 2008) G/AG/N/EU/2, 16 February 2012 (covers the calendar year 2007) G/AG/N/EU/1, 16 February 2012 (covers the calendar year 2006)

Legal provision	Description of requirement	Frequency	WTO document
<b>Agreement on the Application of Sanitary and Phytosanitary Measures</b>			
Annex B, paragraph 3	Enquiry point	Once, then changes	G/SPS/ENQ/26, 11 March 2011
Annex B, paragraph 10	National notification authority	Once, then changes	G/SPS/NNA/16, 11 March 2011
Article 7 and Annex B, paragraph 5	Proposed and adopted SPS regulations	Ad hoc	Several notifications (series G/SPS/N/EU)
<b>Agreement on Technical Barriers to Trade</b>			
Articles 2, 3, 5, and 7	Proposed and adopted technical regulations and conformity assessment procedures	Prior to or, for urgent problems, immediately after the measure is taken	Several notifications (series G/TBT/N/EU)
Articles 10.1 and 10.3	Enquiry point	Once, then changes	G/TBT/ENQ/38/Rev.1, 8 July 2011 G/TBT/ENQ/38, 30 May 2011
Article 10.7			G/TBT/10.7/N/121, 7 February 2013
Paragraph J of the Code of Good Practice for the Preparation, Adoption and Application of Standards	Work programme of bodies that have accepted the Code	Semi-annual	ISO/IEC, WTO TBT Standards Code Directory
<b>Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)</b>			
Article 16.4	Anti-dumping actions	Semi-annual	G/ADP/N/230/EU, 4 September 2012 G/ADP/N/216/EEC, 14 October 2011 G/ADP/N/209/EEC/Corr.1, 26 April 2011 G/ADP/N/209/EEC, 28 March 2011
Article 16.4	Anti-dumping actions	Ad hoc	G/ADP/N/240, 15 March 2013 G/ADP/N/236, 20 December 2012 G/ADP/N/234, 16 October 2012 G/ADP/N/232, 10 August 2012 G/ADP/N/229, 13 June 2012 G/ADP/N/227, 4 April 2012 G/ADP/N/225, 20 February 2012 G/ADP/N/222, 22 December 2011 G/ADP/N/220, 11 October 2011 G/ADP/N/215, 21 June 2011 G/ADP/N/214, 9 May 2011 G/ADP/N/213, 12 April 2011 G/ADP/N/212, 8 March 2011
Article 18.5	New or changes to laws or regulations relevant to the Agreement and in the administration of such laws and regulations	Ad hoc	G/ADP/N/1/EU/2, 17 January 2013 G/ADP/N/1/EU/1, 16 October 2012

Legal provision	Description of requirement	Frequency	WTO document
<b>Agreement on Rules of Origin</b>			
Annex II, paragraph 4	Preferential rules of origin	Once, then changes and new rules	G/RO/N/69, 29 March 2011
<b>Agreement on Import Licensing Procedures</b>			
Articles 1.4(a), 5, and 8.2(b)	Import licensing procedures	Ad hoc	G/LIC/N/1/EU/2, 11 April 2012 G/LIC/N/1/EU/1, 11 April 2012
Article 7.3	Questionnaire	Annual	G/LIC/N/3/EU/1/Add.1, 26 September 2012 G/LIC/N/3/EU/1, 25 September 2012 G/LIC/N/3/EEC/14/Add.1, 29 September 2011 G/LIC/N/3/EEC/14, 28 September 2011
<b>Agreement on Subsidies and Countervailing Measures</b>			
Article 25.1	Subsidies	Every two years (new and full notifications)	G/SCM/N/220/EEC and addenda, 10 October 2012
Article 25.11	Countervailing duties actions	Semi-annual	G/SCM/N/242/EU, 31 August 2012 G/SCM/N/235/EU, 23 March 2012 G/SCM/N/228/EEC, 14 October 2011 G/SCM/N/219/EEC, 11 April 2011
Article 25.11	Countervailing duties actions	Ad hoc	G/SCM/N/255, 15 March 2013 G/SCM/N/247, 5 October 2012 G/SCM/N/245, 7 August 2012 G/SCM/N/241, 7 June 2012 G/SCM/N/239, 5 April 2012 G/SCM/N/237, 15 February 2012 G/SCM/N/231, 11 October 2011 G/SCM/N/227, 17 June 2011 G/SCM/N/225, 27 May 2011 G/SCM/N/224, 13 April 2011 G/SCM/N/223, 24 March 2011
<b>Agreement on Safeguards</b>			
Article 12.1(a)	Initiation/termination of an investigation	Ad hoc	G/SG/N/9/EEC/2, 31 January 2011
Article 12.6	Legislation	Ad hoc	Last notification in 2010
<b>General Agreement on Trade in Services</b>			
Article III:3	New or changes to laws or regulations that significantly affect trade in services	Annual	S/C/N/684-688, 13 March 2013
Articles III:4 and IV:2	Contact and enquiry points	Once, then changes	Last notification in 2009
Article V:7(a)	Economic integration agreements	Ad hoc	S/C/N/681/Rev.1, 21 March 2013 S/C/N/681, 27 February 2013 S/C/N/680, 27 February 2013 S/C/N/564, 8 July 2011

Legal provision	Description of requirement	Frequency	WTO document
<b>Agreement on Trade-Related Aspects of Intellectual Property Rights</b>			
Article 63.2	Laws and regulations	Once, then changes	Last notification in 2010
Article 69	Contact points	Once, then changes	IP/N/3/Rev.11/Add.6, 26 January 2011
TRIPS Council meeting of 22-25 July 1996	Contact points for technical cooperation	Once, then changes	IP/N/7/Rev.3/Add.2, 26 January 2011
<b>Agreement on Government Procurement</b>			
WTO document GPA/1, Annex 3	National threshold	Biennial	GPA/W/314/Add.6, 23 February 2012
Article XIX:5	Procurement statistics	Annual	Last notification in 2010
<b>Other</b>			
GATT document L/4903 (Decision of 28 November 1979)	MFN derogation in favour of developing countries	Ad hoc	WT/COMTD/N/41, 21 January 2013 WT/COMTD/N/4/Add.5, 12 April 2011
WTO document G/L/59 (Decision on Notification Procedures for Quantitative Restrictions)	Quantitative restrictions	Biennial	G/L/59/Rev.1, 3 July 2012

Source: WTO Secretariat.

**Table A2. 3 Status of dispute-related WTO matters involving the EU, January 2011–February 2013**

Subject of dispute	Raised by/against (WTO document)	Request for consultations	Panel established/ panel report circulated	AB report circulated <sup>a</sup>	Other developments
<b>As respondent</b>					
Certain measures affecting the renewable energy generation sector	China (WT/DS452)	05.11.2012	No		
Certain measures concerning the importation of biodiesels	Argentina (WT/DS443)	17.08.2012	No		
Anti-dumping measures on imports of certain fatty alcohols from Indonesia	Indonesia (WT/DS442)	30.07.2012	No		
Seizure of generic drugs in transit	Brazil (WT/DS409)	12.05.2010	No	n.a.	In consultation
Seizure of generic drugs in transit	India (WT/DS408)	11.05.2010	No	n.a.	In consultation
Anti-dumping measures on certain footwear	China (WT/DS405)	04.02.2010	18.05.2010/ 28.10.2011	No	Implementation notified by respondent on 17.12.2012
Measures prohibiting the importation and marketing of seal products	Norway (WT/DS401)	05.11.2009	21.04.2011	n.a.	Panel composed on 04.10.2012
Measures prohibiting the importation and marketing of seal products	Canada (WT/DS400)	02.11.2009	25.03.2011	n.a.	Panel composed on 04.10.2012
Definitive anti-dumping measures on certain iron or steel fasteners	China (WT/DS397)	31.07.2009	23.10.2009/ 03.12.2010	15.07.2011	Implementation notified by respondent on 23.10.2012
Certain measures affecting poultry meat and poultry meat products	United States (WT/DS389)	16.01.2009	19.11.2009	n.a.	None
Expiry reviews of anti-dumping and countervailing duties imposed on imports of PET	India (WT/DS385)	04.12.2008	No	n.a.	None
Tariff treatment of certain information technology products	Chinese Taipei (WT/DS377)	12.06.2008	23.09.2008/ 16.08.2010	No	Implementation notified by respondent on 20.07.2011
Tariff treatment of certain information technology products	Japan (WT/DS376)	28.05.2008	23.09.2008/ 16.08.2010	No	Implementation notified by respondent on 20.07.2011
Tariff treatment of certain information technology products	United States (WT/DS375)	28.05.2008	23.09.2008/ 16.08.2010	No	Implementation notified by respondent on 20.07.2011
Certain measures prohibiting the importation and marketing of seal products	Canada (WT/DS369)	25.09.2007	25.03.2011		Panel established, but not yet composed on 25.03.2011
Regime for the importation of bananas	Panama (WT/DS364)	22.06.2007	No		Settled or terminated (withdrawn, mutually agreed solution) on 08.11.2012
Regime for the importation of bananas	Columbia (WT/DS361)	21.03.2007	No		Settled or terminated (withdrawn, mutually agreed solution) on 08.11.2012



Subject of dispute	Raised by/against (WTO document)	Request for consultations	Panel established/ panel report circulated	AB report circulated <sup>a</sup>	Other developments
Measures affecting the tariff quota for fresh or chilled garlic	Argentina (WT/DS349)	06.09.2006			In consultations on 06.09.2006
Definitive safeguard measure on salmon	Norway (WT/DS328)	01.03.2005			In consultations on 01.03.2005
Measures affecting trade in large civil aircraft	United States (WT/DS316)	06.10.2004	20.07.2005/ 30.06.2010	18.05.2011	Compliance proceeding on-going on 13.04.2012
Aid for commercial vessels	Korea, The Republic of (WT/DS307)	13.02.2004			In consultations on 13.02.2004
Measures affecting imports of wine	Argentina (WT/DS263)	04.09.2002			In consultations on 04.09.2002
Provisional safeguard measures on imports of certain steel products	United States (WT/DS260)	30.05.2002	16.09.2002		Panel established, but not yet composed on 16.09.2002
Generalized System of Preferences	Thailand (WT/DS242)	07.12.2001			In consultations on 07.12.2001
Tariff-rate quota on corn gluten feed from the United States	United States (WT/DS223)	25.01.2001			In consultations on 25.01.2001
Measures affecting soluble coffee	Brazil (WT/DS209)	12.10.2000			In consultations on 12.10.2000
<b>As complainant</b>					
Measures affecting the importation of goods	Argentina (WT/DS438)	25.05.2012	28.01.2013	n.a.	
Measures related to the exportation of rare earths, tungsten and molybdenum	China (WT/DS432)	13.03.2012	23.07.2012	n.a.	Panel report under appeal from Canada (05.02.2013) and the EU (11.02.2013)
Measures relating to the feed-in tariff program	Canada (WT/DS426)	11.08.2011	20.01.2012/19.12.2012	n.a.	Panel report under appeal on 05.02.2013
Definitive anti-dumping duties on X-ray security inspection equipment from the European Union	China (WT/DS425)	25.07.2011	20.01.2012/26.02.2013		
Anti-Dumping measures on imports of stainless steel sheet and strip in coils from Italy	United States (WT/DS424)	01.04.2011	n.a.		
Provisional anti-dumping duties on certain iron and steel fasteners	China (WT/DS407)	07.05.2010	No	n.a.	In consultation
Taxes on distilled spirits	Philippines (WT/DS396)	29.07.2009	19.01.2010	21.12.2011	Implementation notified by respondent on 28.01.2013
Measures related to the exportation of various raw materials	China (WT/DS395)	23.06.2009	21.12.2009	30.01.2012	Implementation notified by respondent on 28.01.2013

Subject of dispute	Raised by/against (WTO document)	Request for consultations	Panel established/ panel report circulated	AB report circulated <sup>a</sup>	Other developments
Certain taxes and other measures on imported wines and spirits	India (WT/DS380)	22.09.2008	No	n.a.	None
Customs valuation of certain products from the European Communities	Thailand (WT/DS370)	25.01.2008	No	n.a.	
Measures affecting trade in large civil aircraft – second complaint	United States (WT/DS353)	27.06.2005	17.02.2006/31.03.2011	12.03.2012	Compliance proceedings ongoing on 23.10.2012
Countervailing duties on olive oil, wheat gluten and peaches	Argentina (WT/DS330)	29.04.2005			In consultations
Section 776 of the Tariff Act of 1930	United States (WT/DS319)	05.11.2004			In consultations on 05.11.2004
Measures affecting trade in large civil aircraft	United States (WT/DS317)	06.10.2004	20.07.2005		Panel composed on 20.07.2005
Anti-Dumping measures on imports of certain products from the European Communities	India (WT/DS304)	08.12.2003			In consultations on 08.12.2003
Laws, regulations and methodology for calculating dumping margins (zeroing)	United States (WT/DS294)	12.06.2003	19.03.2004/ 31.10.2005. Then Article 21.5 circulated on 17.12.2008	18.04.2006. then Article 21.5 circulated on 14.05.2009	Report(s) adopted, with recommendation to bring measure(s) into conformity on 02.07.2012

n.a. Not applicable.

a AB refers to Appellate Body.

Source: WTO Secretariat.

**Table A3. 1 Products to which an entry price applies**

HS code	Product description
07020000	Tomatoes, fresh or chilled
07070005	Cucumbers
07099100	Globe artichokes
07099310	Courgettes
08051020	Sweet oranges, fresh
08052010	Clementines
08052030	Monreales and satsumas
08052050	Mandarins and wilkings
08052070	Tangerines
08052090	Mandarins: other than 0805.20.10, 0805.20.30, 0825.20.50, and 0805.20.70
08055010	Lemons (Citrus limon, Citrus limonum)
08061010	Table grapes, fresh
08081080	Apples: other
08083090	Pears: other
08091000	Apricots
08092100	Cherries: sour cherries ( <i>Prunus cerasus</i> )
08092900	Cherries: other than sour cherries ( <i>Prunus cerasus</i> )
08093010	Peaches: nectarines
08093090	Peaches: other than nectarines
08094005	Plums
20096110	Grape juice (including grape must): of a value exceeding €18 per 100 kg net weight
20096919	Grape juice (including grape must): of a brix value exceeding 67
20096951	Grape juice (including grape must): of a brix value exceeding 30 but not exceeding 67, concentrated
20096959	Grape juice (including grape must): of a brix value exceeding 30 but not exceeding 67, other than 20096951
22043092	Wine of fresh grapes; other grape must, concentrated
22043094	Wine of fresh grapes; other grape must, other than 22043092
22043096	Wine of fresh grapes; other grape must, concentrated
22043098	Wine of fresh grapes; other grape must, other than 22043098

Source: *Official Journal of the European Union*, Commission regulation (EU) No. 927/2012, 9 October 2012.

Table A3. 2 Tariffs under preferential agreements, 2012

	Simple average tariff rate (%)			Duty-free rates as a percentage of total tariff lines in each category (%)		
	Overall	WTO agri.	WTO non-agr.	Overall	WTO agri.	WTO non-agr.
<b>MFN</b>	6.5	14.8	4.4	24.6	18.4	26.3
Albania	0.3	1.2	0.1	97.1	91.1	98.8
Algeria	2.6	12.5	0.0 <sup>a</sup>	84.2	28.7	99.9
Andorra	0.1	0.3	0.0	98.5	93.3	100.0
Bosnia and Herzegovina	0.4	1.2	0.1	97.2	91.5	98.8
CARIFORUM	0.0 <sup>a</sup>	0.1	0.0 <sup>a</sup>	99.0	96.5	99.8
Ceuta-Melilla <sup>b</sup>	2.6	12.7	0.0 <sup>a</sup>	84.6	30.5	99.9
Chile	2.0	9.7	0.1	87.0	48.9	97.8
Croatia	0.3	1.2	0.1	97.2	91.4	98.8
EEA	3.1	13.9	0.3	78.5	23.1	94.1
Egypt	0.2	0.9	0.0 <sup>a</sup>	98.8	94.9	99.9
EPA	0.0 <sup>a</sup>	0.1	0.0 <sup>a</sup>	99.0	96.5	99.8
Faroe Islands	3.4	14.3	0.6	79.3	21.1	95.7
FYROM	0.3	1.2	0.0 <sup>a</sup>	97.6	91.4	99.4
Iceland	4.9	7.6	4.2	33.8	56.6	27.4
Israel	0.5	2.2	0.1	95.5	81.1	99.6
Jordan	0.7	0.3	0.8	94.2	95.6	93.9
Korea, Rep. of	0.9	1.5	0.7	92.7	91.9	92.9
Kosovo	0.8	1.6	0.6	93.3	86.3	95.3
Lebanon	0.3	1.3	0.0	97.3	88.1	100.0
Liechtenstein	5.8	11.6	4.3	28.7	35.7	26.7
Mexico	1.8	8.7	0.0 <sup>a</sup>	90.3	56.4	99.9
Moldova	0.9	4.5	0.0	94.9	76.7	100.0
Montenegro	0.4	1.2	0.1	97.2	91.5	98.8
Morocco	2.5	12.1	0.0 <sup>a</sup>	84.8	31.8	99.8
Norway	5.9	12.3	4.3	27.7	32.5	26.4
Overseas countries and territories	0.1	0.6	0.0	98.5	93.2	100.0
Palestinian Authority	0.0 <sup>a</sup>	0.0 <sup>a</sup>	0.0	99.7	98.6	100.0
Papua New Guinea	0.0 <sup>a</sup>	0.2	0.0 <sup>a</sup>	99.0	96.2	99.8
San Marino	0.0 <sup>a</sup>	0.2	0.0 <sup>a</sup>	98.7	94.4	99.9
Serbia	0.4	1.2	0.1	97.3	91.4	98.9
South Africa	1.7	4.8	0.8	89.0	72.7	93.6
Switzerland	2.8	10.8	0.8	82.0	38.9	94.2
Syria	3.5	13.8	0.8	78.3	23.5	93.8
Tunisia	2.6	12.4	0.1	84.1	29.0	99.7
Turkey <sup>c</sup>	1.7	8.5	0.0 <sup>a</sup>	90.0	55.4	99.8

	Simple average tariff rate (%)			Duty-free rates as a percentage of total tariff lines in each category (%)		
	Overall	WTO agri.	WTO non-agr.	Overall	WTO agri.	WTO non-agr.
Standard GSP	4.2	12.9	2.0	56.5	24.2	65.6
Brazil <sup>d</sup>	4.6	14.0	2.1	55.5	23.6	64.6
China <sup>d</sup>	5.8	13.0	4.0	26.4	22.7	27.4
India <sup>d</sup>	4.3	12.9	2.1	56.5	24.2	65.6
Indonesia <sup>d</sup>	4.3	13.1	2.0	56.3	23.3	65.6
Malaysia <sup>d</sup>	4.3	13.1	2.0	56.3	23.3	65.6
Thailand <sup>d</sup>	4.2	12.9	2.0	56.5	24.2	65.6
Viet Nam <sup>d</sup>	4.3	12.9	2.0	56.1	24.2	65.2
GSP +	1.9	9.3	0.1	88.7	53.4	98.7
EBA	0.0 <sup>a</sup>	0.0	0.0 <sup>a</sup>	99.8	100.0	99.8

a Figures corresponding to lower than 0.05%.

b Preference suspension is taken into account.

c Turkey Customs Union and bilateral concession are taken into account.

d Sector graduations from Standard GSP are taken into account.

Note: All tariff calculations exclude in-quota lines. If no preferential rate is applied, the corresponding MFN rate is used for the calculations. The 2012 tariff is based on HS12 nomenclature consisting of 9,383 tariff lines (at 8-digit tariff line level). *Ad valorem* equivalents (AVEs) were estimated based on 2011 import data at the 8-digit tariff from Eurostat database.

In case of unavailability, the *ad valorem* part is used for compound and alternate rates.

Source: WTO Secretariat calculations, based on IDB database and Eurostat database.

Table A3. 3 Contingency measures, January 2007-January 2013<sup>a</sup>

Partner affected	Initiation of investigation	Imposition of measures	Withdrawn	Product description
<b>Anti-dumping Measures in force (within five-year period)</b>				
Korea	20-Apr-06	19-Jan-07		Silicon
United States	13-Jul-06	11-Oct-07		Peroxosulphates
China	17-Aug-06	15-Nov-07		Dicyandiamide
China	30-Nov-06	28-Feb-08		Ferro-silicon
Egypt	30-Nov-06	28-Feb-08		Ferro-silicon
F.Y.R. Macedonia	30-Nov-06	28-Feb-08		Ferro-silicon
Kazakhstan	30-Nov-06	28-Feb-08		Ferro-silicon
Russian Federation	30-Nov-06	28-Feb-08		Ferro-silicon
South Africa	21-Dec-06	13-Mar-08		Manganese dioxides
China	20-Dec-06	18-Mar-08		Coke of coal in pieces with a diameter of more than 80 mm
China	05-Sep-07	02-Dec-08		Monosodium glutamate
China	04-Sep-07	03-Dec-08		Citric acid
Belarus	26-Sep-07	19-Dec-08		Welded tubes and pipes, of iron or non-alloy steel
China	26-Sep-07	19-Dec-08		Welded tubes and pipes, of iron or non-alloy steel
Russian Federation	26-Sep-07	19-Dec-08		Welded tubes and pipes, of iron or non-alloy steel
China	20-Oct-07	30-Dec-08		Citrus fruits
China	09-Nov-07	31-Jan-09		Fasteners, iron or steel
China	16-Feb-08	13-May-09		PSC wires and strands
China	16-Feb-08	14-May-09		Candles, tapers and the like
Thailand	20-Sep-08	16-Jun-09		Hand pallet trucks and their essential parts
China	08-May-08	05-Aug-09		Wire Rod
United States	13-Jun-08	10-Jul-09		Biodiesel
China	09-Jul-08	06-Oct-09		Seamless pipes and tubes of iron and steel
Brazil	12-Jul-08	06-Oct-09		Aluminium Foil
Armenia	12-Jul-08	06-Oct-09		Aluminium Foil
China	12-Jul-08	06-Oct-09		Aluminium Foil
Korea		11-May-10		Steel Ropes and cables
China	18-Mar-09	16-Jun-10		Cargo Scanning Systems
China	08-Apr-09	16-Jun-10		Molybdenum Wires
China	11-Aug-09	28-Oct-10		Sodium gluconate
China	13-Aug-09	28-Oct-10		Aluminium road wheels
China	08-Sep-09	01-Dec-10		Polyester high tenacity filament yarn
China	02-Oct-09	22-Dec-10		Ironing boards
China	17-Dec-09	15-Mar-11		Continuous filament glass fibre products
Canada	12-Aug-10	11-May-11		Biodiesel (ext.)
Bosnia and Herzegovina	17-Feb-10	14-May-11		Zeolite A powder
China	17-Feb-10	13-May-11		Melamine



Partner affected	Initiation of investigation	Imposition of measures	Withdrawn	Product description
China	18-Feb-10	14-May-11		Coated fine paper
China	20-May-10	09-Aug-11		Open mesh fabrics of glass fibre
Thailand	20-May-10	09-Aug-11		Ring binder mechanisms
China	19-Jun-10	15-Sep-11		Ceramic tiles
India	13-Aug-10	11-Nov-11		Fatty alcohols and their blends
Indonesia	13-Aug-10	11-Nov-11		Fatty alcohols and their blends
Malaysia	13-Aug-10	11-Nov-11		Fatty alcohols and their blends
China	30-Sep-10	20-Dec-11		Seamless pipes and tubes of stainless steel
Malaysia	28-Oct-10	26-Jul-11		Fasteners, iron or steel
China	18-May-11	12-Jan-12		Molybdenum wires
Malaysia	18-May-11	12-Jan-12		Molybdenum wires
China	26-Jan-11	18-Apr-12		Oxalic acid
India	26-Jan-11	18-Apr-12		Oxalic acid
Malaysia		24-Jul-12		Open mesh fabrics of glass fibres
China	12-Aug-11	09-Nov-12		Aluminium radiators
Russian Federation	01-Nov-11	29-Jan-13		Tube and pipe fitting, of iron or steel
Turkey	01-Nov-11	29-Jan-13		Tube and pipe fitting, of iron or steel
<b>Measures in force through extension (after five-year period)</b>				
China		28-Jul-90		Silicon metal
China		27-Sep-90		Tungsten carbide and fused tungsten carbide
China		09-Sep-93		Bicycles
Russian Federation	09-Jun-94	23-Aug-95		Ammonium nitrate
China		03-Apr-96		Tube and piping fitting, of iron or steel
Thailand		03-Apr-96		Tube and piping fitting, of iron or steel
China		05-Jun-96		Powered activated carbon
China		18-Jan-97		Bicycle parts
China		24-Jan-97		Ring binder mechanisms
India	01-Jul-97	26-Jun-98		Synthetic fibre ropes
China	20-May-98	17-Aug-99		Steel ropes and cables
Ukraine	20-May-98	17-Aug-99		Steel ropes and cables
Chinese Taipei		14-Apr-00		Tube and pipe fitting, of iron or steel
Russian Federation	05-May-00	04-Aug-01		Steel ropes and cables
China	06-Jul-01	25-Jul-02		Sulphanilic acid
India	06-Jul-01	25-Jul-02		Sulphanilic acid
Korea	01-Jun-01	24-Aug-02		Tube and pipe fitting, of iron or steel
Malaysia	01-Jun-01	24-Aug-02		Tube and pipe fitting, of iron or steel
Thailand	29-Jun-01	27-Sep-02		Welded tubes and pipes of iron or non – alloy steel
Ukraine	29-Jun-01	27-Sep-02		Welded tubes and pipes of iron or non – alloy steel
Indonesia		06-Jun-03		Tube and pipe fitting, of iron or steel
China	19-Dec-02	11-Mar-04		Sodium cyclamate
Indonesia	19-Dec-02	11-Mar-04		Sodium cyclamate

Partner affected	Initiation of investigation	Imposition of measures	Withdrawn	Product description
Moldova		24-Apr-04		Steel ropes and cables
Vietnam	01-Oct-03	04-Dec-04		Ring binder mechanisms
China	22-May-03	19-Aug-04		PET
India	21-Aug-03	18-Sep-04		Graphite electrode system
Morocco		30-Oct-04		Steel ropes and cables
China	19-Aug-03	12-Nov-04		Okoumé plywood
Indonesia		01-Dec-04		Tube and pipe fitting, of iron or steel
Sri Lanka		01-Dec-04		Tube and pipe fitting, of iron or steel
China	30-Apr-04	21-Jul-05		Barium carbonate
China	29-Apr-04	21-Jul-05		Hand pallet trucks and their essential parts
China	30-Apr-04	29-Jul-05		Castings
China	10-Jul-04	07-Oct-05		Trichloroisocyan uric acid (TCCA)
China	24-Aug-04	19-Nov-05		Stainless steel fasteners and parts thereof
Chinese Taipei	24-Aug-04	19-Nov-05		Stainless steel fasteners and parts thereof
Laos	13-Apr-05	12-Jan-06		Ring binder mechanisms
China	30-Oct-04	27-Jan-06		Tartaric acid
Philippines	05-Aug-05	29-Apr-06		Tube and pipe fitting, of iron or steel
China	28-Apr-05	27-Jul-06		Level arch mechanisms
China	25-Jun-05	14-Sep-06		Chamois leather
China	30-Jun-05	29-Sep-06		Plastic sacks and bags
<b>Measures terminated/withdrawn during the review period</b>				
Thailand	22-Dec-09		20-Jan-11 <sup>b</sup>	Purified Terephthalic Acid (PTA)
China	30-Jun-10		03-Mar-11 <sup>b</sup>	Wireless wide area networking modems
India	01-Apr-10		10-Mar-11 <sup>b</sup>	Stainless steel bars
China	07-Jul-05	06-Oct-06	16-Mar-11 <sup>d</sup>	Footwear with uppers of leather
Macao, China		01-May-08	16-Mar-11 <sup>d</sup>	Footwear with uppers of leather
Viet Nam	07-Jul-05	06-Oct-06	16-Mar-11 <sup>d</sup>	Footwear with uppers of leather
Singapore	12-Aug-10		11-May-11 <sup>b</sup>	Biodiesel
China	23-Oct-91	11-Dec-93	17-May-11 <sup>d</sup>	Magnesia
China	19-Dec-03	17-Mar-05	09-Jun-11 <sup>d</sup>	Polyester staple fibres
China	13-Jul-04	12-Oct-05	25-Jun-11 <sup>d</sup>	Magnesia bricks
China	20-May-94	04-Apr-96	08-Jul-11 <sup>d</sup>	Coumarin
Belarus	31-Oct-90	24-Oct-92	12-Jul-11 <sup>d</sup>	Potassium chloride
Russian Federation	31-Oct-90	24-Oct-92	12-Jul-11 <sup>d</sup>	Potassium chloride
China	23-Jul-10		10-Aug-11 <sup>b</sup>	Tris phosphate (TCPP)
Korea	02-Jun-05	31-Aug-06	31-Aug-11 <sup>d</sup>	Refrigerators
China	30-Apr-04	29-Jul-05	02-Sep-11 <sup>d</sup>	Castings
China	17-Dec-10		30-Sep-11 <sup>b</sup>	Graphite electrode systems
Oman	16-Feb-11		14-Dec-11 <sup>b</sup>	Polyethylene tere-phthalate (PET)
Saudi Arabia	16-Feb-11		14-Dec-11 <sup>b</sup>	Polyethylene tere-phthalate (PET)
Algeria	26-Jun-99	24-Mar-00	21-Dec-11 <sup>d</sup>	Urea and ammonium nitrate solutions

Partner affected	Initiation of investigation	Imposition of measures	Withdrawn	Product description
Belarus	26-Jun-99	22-Sep-00	21-Dec-11 <sup>d</sup>	Urea and ammonium nitrate solutions
Russian Federation	26-Jun-99	22-Sep-00	21-Dec-11 <sup>d</sup>	Urea and ammonium nitrate solutions
Ukraine	26-Jun-99	22-Sep-00	21-Dec-11 <sup>d</sup>	Urea and ammonium nitrate solutions
United States	04-Dec-10		12-Jan-12 <sup>b</sup>	Vinyl acetate
Switzerland	18-May-11		12-Jan-12 <sup>b</sup>	Molybdenum wires
Russian Federation	30-Nov-06	28-Feb-08	25-Jan-12 <sup>d</sup>	Ferro-silicon
South Africa	20-May-98	17-Aug-99	09-Feb-12 <sup>d</sup>	Steel ropes and cables
Korea	06-Nov-99	30-Nov-00	28-Feb-12 <sup>d</sup>	PET
India	13-May-11		23-Mar-12 <sup>b</sup>	Stainless steel fasteners
China	17-Feb-11		05-Apr-12 <sup>b</sup>	Sodium cyclamate
China	19-Jan-06	17-Apr-07	17-Apr-12 <sup>d</sup>	Strawberries
Belarus	28-Jun-11		08-May-12 <sup>b</sup>	Seamless pipes and tubes of iron or steel
China	28-Jul-11		22-May-12 <sup>b</sup>	Woven and/or stitched glass fibre fabrics
China	29-Jul-11		05-Jun-12 <sup>b</sup>	Tartaric acid
China	07-Apr-06	21-Jun-07	21-Jun-12 <sup>d</sup>	Saddles
China	31-Jul-93	31-Oct-03	26-Jun-12 <sup>d</sup>	Furfuraldehyde
India	06-Nov-99	30-Nov-00	28-Jun-12 <sup>d</sup>	PET
China	19-Apr-11		28-Jun-12 <sup>b</sup>	Soy protein products
India		23-Aug-01	07-Nov-12 <sup>d</sup>	PET film
Brazil		18-Nov-04	07-Nov-12 <sup>d</sup>	PET film
Israel		18-Nov-04	07-Nov-12 <sup>d</sup>	PET film
China		04-May-95	13-Dec-12 <sup>d</sup>	Lighters
Chinese Taipei		29-Jan-99	13-Dec-12 <sup>d</sup>	Lighters
Vietnam	26-Jun-12		13-Dec-12 <sup>b</sup>	Lighters
<b>Measures expired during the review period</b>				
Croatia	31-Mar-05	29-Jun-06	30-Jun-11 <sup>c</sup>	Seamless pipes and tubes, of iron or steel
China	25-Jun-05	14-Sep-06	15-Sep-11 <sup>c</sup>	Chamois leather
Thailand	25-Jun-05	14-Sep-06	15-Sep-11 <sup>c</sup>	Chamois leather
Thailand	30-Jun-05	29-Sep-06	30-Sep-11 <sup>c</sup>	Plastic sacks and bags
United States		02-Feb-94	23-Jan-12 <sup>e</sup>	Ethanolamine
Chinese Taipei	06-Nov-99	30-Nov-00	28-Feb-12 <sup>e</sup>	Polyethylene terephthalate (PET)
India	06-Nov-99	30-Nov-00	28-Feb-12 <sup>e</sup>	Polyethylene terephthalate (PET)
Indonesia	06-Nov-99	30-Nov-00	28-Feb-12 <sup>e</sup>	Polyethylene terephthalate (PET)
Korea	06-Nov-99	30-Nov-00	28-Feb-12 <sup>e</sup>	Polyethylene terephthalate (PET)
Malaysia	06-Nov-99	30-Nov-00	28-Feb-12 <sup>e</sup>	Polyethylene terephthalate (PET)
Thailand	06-Nov-99	30-Nov-00	28-Feb-12 <sup>e</sup>	Polyethylene terephthalate (PET)
China	17-Dec-05	13-Mar-07	14-Mar-12 <sup>c</sup>	Tungsten electrodes
Thailand	17-Dec-05	13-Mar-07	14-Mar-12 <sup>c</sup>	Tungsten electrodes
China	19-Jan-06	17-Apr-07	18-Apr-12 <sup>c</sup>	Strawberries (frozen)
Thailand	19-Jan-06	17-Apr-07	18-Apr-12 <sup>c</sup>	Strawberries (frozen)
China	04-Feb-06	26-Apr-07	27-Apr-12 <sup>c</sup>	Ironing boards
Thailand	04-Feb-06	26-Apr-07	27-Apr-12 <sup>c</sup>	Ironing boards

Partner affected	Initiation of investigation	Imposition of measures	Withdrawn	Product description
Ukraine	04-Feb-06	26-Apr-07	27-Apr-12 <sup>c</sup>	Ironing boards
Ukraine	29-Oct-99	25-Jan-01	17-Jun-12 <sup>e</sup>	Ammonium nitrate
Thailand	28-Mar-06	20-Jun-07	21-Jun-12 <sup>b</sup>	Sweet corn
China	07-Apr-06	21-Jun-07	22-Jun-12 <sup>c</sup>	Saddles
Ukraine	31-Mar-05	29-Jun-06	04-Jul-12 <sup>c</sup>	Seamless pipes and tubes, of iron or steel
Russian Federation	31-Mar-05	29-Jun-06	04-Jul-12 <sup>c</sup>	Seamless pipes and tubes, of iron or steel
China	13-Jul-06	11-Oct-07	12-Oct-12 <sup>c</sup>	Peroxosulphates (persulphates)
Chinese Taipei	13-Jul-06	11-Oct-07	12-Oct-12 <sup>c</sup>	Peroxosulphates (persulphates)
Russian Federation	05-May-00	04-Aug-01	31-Oct-12 <sup>e</sup>	Steel ropes and cables
India	27-May-00	23-Aug-01	07-Nov-12 <sup>e</sup>	PET film
Thailand	27-May-00	23-Aug-01	07-Nov-12 <sup>e</sup>	PET film
China	17-Aug-06	15-Nov-07	16-Nov-12 <sup>c</sup>	Dicyandiamide
China	06-Sep-06	05-Dec-07	06-Dec-12 <sup>c</sup>	Silico – manganese
Kazakhstan	06-Sep-06	05-Dec-07	06-Dec-12 <sup>c</sup>	Silico – manganese
India	11-Nov-06	26-Jan-08	27-Jan-13 <sup>c</sup>	Dihydromyrcenol
<b>New investigation initiated during the review period</b>				
China	26-Jan-11			Oxalic acid
Oman	16-Feb-11			Polyethylene tere-phthalate (PET)
China	12-Aug-11			Aluminium radiators
Russian Federation	01-Nov-11			Tube and pipe fittings of iron or steel
Turkey	01-Nov-11			Tube and pipe fittings of iron or steel
United States	25-Nov-11			Bioethanol
Kazakhstan	17-Dec-11			White phosphorus (elemental or yellow phosphorus)
China	20-Dec-11			Aluminium foil in rolls
China	21-Dec-11			Organic coated steel
China	16-Feb-12			Ceramic tableware and kitchenware
China	16-Feb-12			Threaded tube or pipe cast fittings of malleable cast iron
Indonesia	16-Feb-12			Threaded tube or pipe cast fittings of malleable cast iron
Thailand	16-Feb-12			Threaded tube or pipe cast fittings of malleable cast iron
F.Y.R. Macedonia	31-Mar-12			Welded tubes, pipes and hollow profile of square or rectangular cross-section
Turkey	31-Mar-12			Welded tubes, pipes and hollow profile of square or rectangular cross-section
Ukraine	31-Mar-12			Welded tubes, pipes and hollow profile of square or rectangular cross-section
China	24-Jul-12			Bicycles
India	10-Aug-12			Stainless steel wire
Argentina	29-Aug-12			Biodisel
Indonesia	29-Aug-12			Biodisel

Partner affected	Initiation of investigation	Imposition of measures	Withdrawn	Product description
China	06-Sep-12			Solar panels
Malaysia	26-Sep-12			Bicycles
Sri Lanka	26-Sep-12			Bicycles
Tunisia	26-Sep-12			Bicycles
China	23-Oct-12			Aluminium foil
China	10-Nov-12			Stainless steel tube and pipe butt – welding fittings
Chinese Taipei	10-Nov-12			Stainless steel tube and pipe butt – welding fittings
China	20-Dec-12			Molybdenum wire
Chinese Taipei	16-Jan-13			Open mesh fabrics of glass fibres
Thailand	16-Jan-13			Open mesh fabrics of glass fibres
<b>Countervailing Measures in force (within five-year period)</b>				
USA	13-Jun-08	10-Jul-09		Biodiesel
Iran	03-Sep-09	29-Sep-10		PET (polyethylene terephthalate)
Pakistan	03-Sep-09	29-Sep-10		PET (polyethylene terephthalate)
United Arab Emirates	03-Sep-09	29-Sep-10		PET (polyethylene terephthalate)
India	01-Apr-10	28-Apr-11		Stainless steel bars and rods
China	17-Apr-10	14-May-11		Coated fine paper
Canada	12-Aug-10	11-May-11		Biodiesel
<b>Measures in force through extension (after five-year period)</b>				
India	21-Aug-03	18-Sep-04		Graphite electrode systems
India	06-Jul-01	25-Jul-02		Sulphalinic Acid
<b>New investigation initiated during the review period</b>				
China	22-Feb-12			Organic coated steel products
China	27-Apr-12			Bicycles
India	10-Aug-12			Stainless steel wire
China	08-Nov-12			Solar panels
Argentina	10-Nov-12			Biodiesel
Indonesia	10-Nov-12			Biodiesel
<b>Measures withdrawn/terminated during the review period</b>				
Thailand	22-Dec-09		20-Jan-11 <sup>a</sup>	Purified terephthalic acid
China	16-Sep-10		03-Mar-11 <sup>a</sup>	Wireless wide area networking modems
Brazil	19-Feb-04	18-Nov-04	03-Mar-11 <sup>c</sup>	PET film (polyethylene terephthalate)
Israel	19-Feb-04	18-Nov-04	03-Mar-11 <sup>c</sup>	PET film (polyethylene terephthalate)
India	21-Nov-98	10-Dec-99	03-Mar-11 <sup>c</sup>	PET film (polyethylene terephthalate)
Singapore	12-Aug-10		11-May-11 <sup>a</sup>	Biodiesel
Indonesia		10-Nov-06	08-Jul-11 <sup>c</sup>	Coumarin

Partner affected	Initiation of investigation	Imposition of measures	Withdrawn	Product description
Malaysia		10-Nov-06	08-Jul-11 <sup>c</sup>	Coumarin
India		09-May-02	08-Jul-11 <sup>c</sup>	Coumarin
Thailand		31-Dec-04	08-Jul-11 <sup>c</sup>	Coumarin
India	12-Sep-97	09-Oct-98	11-Aug-11 <sup>c</sup>	Antibiotics (broad spectrum)
China		13-Apr-94	25-Aug-11 <sup>c</sup>	Silicon carbide
Oman	16-Feb-11		14-Dec-11 <sup>a</sup>	Polyethylene terephthalate (PET)
Saudi Arabia	16-Feb-11		14-Dec-11 <sup>a</sup>	Polyethylene terephthalate (PET)
India	13-May-11		24-May-12 <sup>a</sup>	Stainless steel fasteners
United States	25-Nov-11		21-Dec-12 <sup>a</sup>	Bioethanol
<b>Measures expired during the review period</b>				
India	06-Nov-99	30-Nov-00	28-Feb-12 <sup>d</sup>	Polyethylene terephthalate (PET)

- a The measures in this table are listed by trading partners affected.  
b Investigation terminated.  
c Measures automatic expired.  
d Measures terminated.  
e Measures extended then expired.

Source: WTO Secretariat, and European Commission online information.

**Table A3. 4 Anti-dumping measures, by trading partner, 2008-12**

<b>Trading partner/region</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Algeria	1	1	1	0	0
Armenia	0	1	1	1	1
Australia	1	0	0	0	0
Belarus	3	3	3	1	1
Bosnia and Herzegovina	0	0	0	1	1
Brazil	1	2	2	2	1
Canada	0	0	0	1	1
China	48	54	54	53	48
Chinese Taipei	6	6	5	5	3
Croatia	1	1	1	1	0
Egypt	1	1	1	1	1
Faroe Islands	1	0	0	0	0
India	8	8	7	7	7
Indonesia	5	5	4	4	4
Israel	1	1	1	1	0
Kazakhstan	2	2	2	2	1
Korea	5	5	5	4	3
Laos	1	1	1	1	1
Macao, China	1	1	1	0	0
Macedonia	1	1	1	1	0
Malaysia	4	4	3	3	6
Moldova	1	1	1	1	1
Morocco	1	1	1	1	1
Pakistan	1	0	0	0	0
Philippines	1	1	1	1	1
Russia	8	8	8	6	5
Saudi Arabia	1	1	0	0	0
South Africa	2	2	2	2	1
Sri Lanka	1	1	1	1	1
Thailand	7	8	7	7	6
Ukraine	6	6	6	5	4
United States	4	5	3	3	2
Viet Nam	4	4	2	1	1
<b>Total number of measures</b>	<b>128</b>	<b>135</b>	<b>125</b>	<b>117</b>	<b>102</b>

Source: Information provided by the European Commission.



**Table A3. 5 Summary of the main legislation on intellectual property rights, 2013**

Intellectual property right	Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
<b>Copyright and related rights</b>	<ul style="list-style-type: none"> <li>• Directive 2001/29/EC of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society</li> <li>• Directive 2012/28/EU of 25 October 2012 on certain permitted uses of orphan works</li> <li>• Directive 2006/115/EC of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property</li> <li>• Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights, as amended by Directive 2011/77/EU of 27 September 2011</li> <li>• Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission</li> <li>• Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art</li> <li>• Council Directive 2009/24/EC of 23 April 2009 on the legal protection of computer programs</li> <li>• Directive 96/9/EC of 11 March 1996 on the legal protection of databases</li> <li>• Council Decision 2000/278/EC of 16 March 2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty</li> <li>• National laws of the EU member States</li> </ul>	<p>IP/N/1/EU/C/1</p> <p>IP/N/1/EU/C/2</p> <p>IP/N/1/EU/C/3</p> <p>IP/N/1/EU/C/4</p> <p>IP/N/1/EU/C/5</p> <p>IP/N/1/EU/C/6</p> <p>IP/N/1/EU/C/7</p> <p>IP/N/1/EEC/C/2</p> <p>IP/N/1/EU/C/8</p>
<b>Trade marks</b>	<ul style="list-style-type: none"> <li>• Directive 2008/95/EC of 22 October 2008 to approximate the laws of the member States relating to trademarks</li> <li>• Council Regulation (EC) No. 207/2009 of 26 February 2009 on the Community trademark</li> <li>• Council Regulation (EC) No. 1992/2003 of 27 October 2003 amending Regulation (EC) No. 40/94 on the Community trademark to give effect to the accession of the European Community to the Protocol relating to the Madrid Agreement concerning the international registration of marks adopted at Madrid on 27 June 1989</li> <li>• Commission Regulation (EC) No. 2082/2004 of 6 December 2004, amending Regulation (EC) No. 216/96 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trademarks and Designs)</li> <li>• Commission Regulation (EC) No. 355/2009 of 31 March 2009 amending Regulation (EC) No. 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trademarks and Designs) and Regulation (EC) No. 2868/95 implementing Council Regulation (EC) No. 40/94 on the Community trademark</li> <li>• National laws of the EU member States on trademarks: national trademark systems exist in parallel to the Community trademark system</li> </ul>	<p>IP/N/1/EU/T/1</p> <p>IP/N/1/EU/T/2</p> <p>IP/N/1/EEC/T/2</p> <p>IP/N/1/EU/T/3</p> <p>IP/N/1/EEC/T/4</p>

Intellectual property right	Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
<b>Geographical indications</b>	<ul style="list-style-type: none"> <li>• <u>Wines</u>: Council Regulation (EC) No. 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products, as amended by Council Regulation (EC) No. 491/2009</li> <li>• Commission Regulation (EC) No. 607/2009 of 14 July 2009, laying down certain detailed rules regarding protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products</li> <li>• <u>Spirits</u>: Regulation (EC) No. 110/2008 of the EP and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks</li> <li>• <u>Agricultural products and foodstuffs</u>: Council Regulation (EU) No. 1151/2012 of 21 November 2012 on quality schemes for agricultural products and foodstuffs</li> <li>• For the protection as collective trademarks, see Regulation (EC) No. 207/2009 of 26 February 2009 on the Community trademark</li> <li>• National laws of the EU member States, and the Appellation System of certain EU member States</li> </ul>	<p>IP/N/1/EU/G/1 and IP/N/1/EU/G/2</p> <p>IP/N/1/EEC/4 and IP/N/1/EEC/G/5</p> <p>IP/N/1/EEC/4 and IP/N/1/EEC/G/6</p> <p>IP/N/1/EU/G/3</p> <p>IP/N/1/EU/T/2</p>
<b>Industrial designs</b>	<ul style="list-style-type: none"> <li>• Directive 98/71/EC of 13 October 1998 on the legal protection of designs</li> <li>• Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs, as amended by Council Regulation (EC) No. 1891/2006 of 18 December 2006</li> <li>• Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No. 6/2002, as amended by Commission Regulation (EC) No 876/2007 of 24 July 2007</li> <li>• Commission Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office for Harmonization in the Internal Market (Trademarks and Designs) in respect of the registration of Community designs, as amended by Commission Regulation (EC) No. 877/2007 of 24 July 2007</li> <li>• Council Decision 2006/954/EC of 18 December 2006 approving the accession of the EC to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999</li> <li>• National laws of the EU member States: national industrial design systems exist in parallel with the Community design system</li> </ul>	<p>IP/N/1/EU/D/1</p> <p>IP/N/1/EU/D/2</p> <p>IP/N/1/EU/D/3</p> <p>IP/N/1/EU/D/4</p> <p>IP/N/1/EU/D/5</p>

Intellectual property right	Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
<b>Patents</b>	<ul style="list-style-type: none"> <li>Regulation (EU) No. 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection</li> <li>Regulation (EU) No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements</li> <li>Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions</li> <li>Regulation (EC) No. 1901/2006 of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No. 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No. 726/2004</li> <li>Regulation (EC) No. 816/2006 of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems</li> <li>National patent laws of the EU member States and the European Patent Convention (EPC) exist alongside and in parallel with the European patent system</li> </ul>	<p>IP/N/1/EU/P/1</p> <p>IP/N/1/EU/P/8</p> <p>IP/N/1/EEC/P/4 IP/N/1/EU/P/2</p> <p>IP/N/1/EEC/P/5</p>
<b>Supplementary protection certificates</b>	<ul style="list-style-type: none"> <li>Regulation (EC) No 469/2009 of 6 May 2009 concerning the supplementary protection certificate for medicinal products</li> <li>Regulation (EC) No 1610/96 of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products</li> </ul>	<p>IP/N/1/EU/P/3</p> <p>IP/N/1/EU/P/4</p>
<b>Plant varieties</b>	<ul style="list-style-type: none"> <li>Council Regulation (EC) No. 2100/94 of 27 July 1994, as amended by Council Regulation (EC) No. 15/2008</li> <li>Commission Regulation (EC) No. 874/2009 of 17 September 2009, establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards proceedings before the Community Plant Variety Office</li> <li>Commission Regulation (EC) No. 1238/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the fees payable to the Community Plant Variety Office, as amended by Commission Regulation (EC) No. 572/2008 of 19 June 2008 and Commission Implementing Regulation (EU) No. 510/2012 of 15 June 2012</li> <li>Commission Regulation (EC) No. 1768/95 of 24 July 1995, establishing implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No. 2100/94, as amended by Commission Regulation (EC) No. 2605/98 of 3 December 1998</li> <li>National laws of the EU member States: national systems work in parallel with the Community system</li> </ul>	<p>IP/N/1/EEC/P/3</p> <p>IP/N/1/EU/P/5</p> <p>IP/N/1/EU/P/6</p> <p>IP/N/1/EU/P/7</p>
<b>Protection of layout designs</b>	<ul style="list-style-type: none"> <li>Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products</li> <li>Council Decision 94/824/EC of 22 December 1994 on the extension of the legal protection of semiconductor products to persons from a Member of the WTO</li> </ul>	<p>IP/N/1/EEC/1/Rev.1 and IP/N/1/EEC/L/1</p> <p>IP/N/1/EEC/1/Rev.1 and IP/N/1/EEC/L/2</p>
<b>Undisclosed information and clinical trial data</b>	<ul style="list-style-type: none"> <li>Directive 2001/83/EC of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC of 31 March 2004</li> <li>Regulation No. 726/2004 of the EP and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency</li> <li>National laws of the EU member States</li> </ul>	<p>IP/N/1/EU/U/1</p> <p>IP/N/1/EU/U/2</p>

Intellectual property right	Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>• Council Regulation (EC) No. 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights</li> <li>• Commission Regulation No. 1891/2004 of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) No. 1383/2003</li> <li>• Directive 2004/48/EC of 29 April 2004 on the enforcement of IPRs</li> <li>• National laws of the EU member States</li> </ul>	<p>IP/N/1/EEC/2 and IP/N/1/EEC/E/2</p> <p>IP/N/1/EEC/2 and IP/N/1/EEC/E/3</p> <p>IP/N/1/EEC/2 and IP/N/1/EEC/E/4</p>

Source: WTO Secretariat.

**Table A3. 6 Term of protection of major intellectual property rights, 2013**

Type of rights	Term of protection	Competent agency at the EU level
<b>Copyright</b>		
<ul style="list-style-type: none"> <li>• Authors' right</li>   <li>• Work published in volumes</li>   <li>• Works that have not been lawfully made available to the public within 70 years from their creation</li>   <li>• Cinematographic or audiovisual works</li>   <li>• Performers</li>   <li>• Producers of phonograms</li>   <li>• Producers of a film<sup>b</sup></li>   <li>• Broadcasting organizations</li>   <li>• Photographs<sup>c</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Life of the author plus 70 years irrespective of the date the work was lawfully made available to the public. In the case of joint authorship the term should be calculated after the death of the last surviving author. In the case of anonymous or pseudonymous works, 70 years after the work is lawfully made available to the public. If the pseudonym does not leave any doubt as to the identity of the author, then protection is for the life of the author plus 70 years irrespective of the date the work was lawfully made available to the public</li>   <li>• Protection runs from the time the work was lawfully made available to the public</li>   <li>• Protection should be terminated</li>   <li>• Protection expires 70 years after the death of the author<sup>a</sup>.</li>   <li>• Protection expires 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights expire 70 years from the date of the first such publication or the first such communication to the public, whichever is the earlier</li>   <li>• Protection expires 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the rights expire 70 years from the date of the first lawful publication. If no lawful publication has taken place, and the phonogram has been lawfully communicated to the public within this period, the rights will expire 70 years from the date of the first lawful communication to the public</li>   <li>• Protection expires 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights will expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier</li>   <li>• Protection expires 50 years after the first transmission of a broadcast whether transmitted by wire or over the air, including by cable or satellite</li>   <li>• Life of the author plus 70 years no matter when it was lawfully made available to the public. In the case of joint authorship, the term should be calculated after the death of the last author. In the case of anonymous or pseudonymous works, 70 years after the work is lawfully made available to the public. If the pseudonym does not leave any doubt as to the identity of the author then protection is for the life of the author plus 70 years no matter when the work was lawfully made available to the public</li> </ul>	<p>Copyright is protected without registration</p>

Type of rights	Term of protection	Competent agency at the EU level
<b>Patents</b> Any inventions, in all field of technology, that are new, involve an inventive step, and are susceptible of industrial application	20 years from the date of filing; under a supplementary protection certificate, an additional period of market exclusivity of up to five years may be granted for medicinal and plant protection products; an extension of another six months is available under paediatric legislation	European Patent Office (EPO) for European patent and unitary patents
<b>Plant varieties</b> Plant varieties which are distinct, uniform, stable, and new	Plant varieties for 25 years, wine and tree species for 30 years. Protection may be extended for 5 years	Community Plant Variety Office (CPVO)
<b>Trade marks</b> Any signs represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings	10 years from the date of filling of application, may be renewed for an indefinite number of 10-year periods	Office for Harmonization in the Internal Market (OHIM) for Community trade marks
<b>Geographical indications</b> Indications which identify a good as originating in the territory of a Member or a region or locality in that territory, where a given quality, reputation or other characteristics of the good are essentially attributable to its geographical origin	For GIs protected as Community collective trademarks: 10 years from the date of filling of application, may be renewed for an indefinite number of 10 year periods. For GIs protected as PDO/PGI, the term of protection is indefinite, unless the geographical indication ceases to be protected	European Commission DG Agriculture and DG Trade. OHIM for Community collective trade marks
<b>Industrial designs</b> Designs that are new and have individual character. A design is considered new if no identical design (i.e. one whose features differ only in immaterial details) has been made available to the public. It has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public	Registered design: one or more periods of 5 years, up to a maximum of 25 years from the date of filing. Unregistered design: 3 years after publication	OHIM for Community designs

Type of rights	Term of protection	Competent agency at the EU level
<p><b>Undisclosed test or other data</b> Data the origination of which involves considerable effort and which must be submitted to regulatory authorities in order to obtain marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities</p>	8-11 years of data and marketing protection	European Medicines Agency (EMA) grants marketing authorization

- a The principal director of a cinematographic or audiovisual work is considered the author. The author of the screenplay and/or the author of a dialogue are designated as co-authors.
- b The term "film" designates a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.
- c Photographs are protected under Community law only if they are the author's own intellectual creation. Member States may provide protection for other photographs.

Source: WTO Secretariat.



**Table A4. 1 Main economic indicators of the insurance sector, by member State, 2011**

(€ million, unless otherwise indicated)

	Gross written premiums				EU total insurers' investment portfolio	Number of insurance companies	Number of employee
	Total	Life	Non-life	Health			
Austria	16,454	6,988	9,466	1,697	82,354	72	25,794
Belgium	29,207	18,572	10,635	1,308	234,625	147	23,911
Bulgaria	813	119	695	0	1,056	367	..
Cyprus	859	385	474	97	2,164	34	1,968
Czech Republic	5,957	2,685	3,272	123	13,491	53	14,274
Denmark	21,881	15,941	5,940	153	286,548	186	16,871
Estonia	283	66	217	7	1,236	19	..
Finland	18,145	14,535	3,610	218	121,501	63	10,646
France	190,013	124,476	65,537	9,566	1,702,300	441	147,750
Germany	178,079	86,798	91,282	34,667	1,403,538	582	215,500
Greece	4,885	2,155	2,730	19	10,433	73	9,000
Hungary	2,939	1,574	1,365	23	7,691	32	24,493
Ireland	11,400	8,500	2,900	..	79,421	227	13,500
Italy	110,228	73,869	36,359	2,172	511,000	242	47,477
Latvia	316	34	282	23	406	25	..
Lithuania	..	..	..	..	..	..	..
Luxembourg	1,991	1,238	753	40	..	95	4,021
Malta	301	202	99	6	3,494	56	..
Netherlands	78,751	21,910	56,841	40,465	380,508	263	56,000
Poland	13,869	7,729	6,140	106	31,599	63	..
Portugal	11,666	7,533	4,133	540	51,454	82	11,242
Romania	1,845	410	1,435	7	..	43	..
Slovakia	2,109	1,145	964	..	..	22	6,100
Slovenia	2,053	599	1,454	429	..	20	6,099
Spain	59,568	29,749	29,819	6,540	228,064	287	..
Sweden	29,689	22,974	6,715	728	325,948	384	20,428
United Kingdom	206,019	143,799	62,221	4,707	1,636,171	1,314	..
<b>Total</b>	<b>999,320</b>	<b>593,985</b>	<b>405,338</b>	<b>103,641</b>	<b>7,115,002</b>	<b>5,192</b>	<b>655,074</b>

.. Not available.

Source: Insurance Europe.

Table A4. 2 Number of insurance companies, by type, origin, and location of activity, 2011

	AT	BE	BU	CY	CZ	DK	EE	FI	FR	DE	GR	HU	IE	IT	LV	LT	LU	MT	NL	PL	PT	RO	ES	SK	SI	SE	GB	Total
<b>Life enterprises</b>																												
1 National enterprises	3	18	16	6	3	45	4	10	63	95	10	12	61	57	3	5	45	7	44	28	14	12	90	6	4	39	118	818
2 Branches of third (non-EU/EEA) countries	0	0		1	0	0	0	0	0	2	1		1	0	0	0					0		0			0	1	6
1 + 2 Total under national supervision	3	18	16	7	3	45	4	10	63	97	11	12	62	57	3	5	45	7	44	28	14	12	90	6	4	39	119	824
3 Branches of EU/EEA countries	3	8	2		3	6	1	5		18	2		8	18	5	5	2				2	6	2	16	2		5	119
1 + 2 + 3 Total activity in the country	6	26	18	7	6	51	5	15	63	115	13	12	70	75	8	10	47	7	44	30	20	14	106	8	4	44	119	943
Branches in EU/EEA countries	0	1		1	0	2	3	0		9		1	27	0	0	2	19			2	1		11	1	1	10		91
Branches in third (non-EU/EEA) countries	0	0		1	0	1	0	0						1	0		2					0				0		5
<b>Non-life enterprises</b>																												
1 National enterprises	17	52	18	18	17	80	8	19	224	266	31	15	120	71	9	6	29	35	174	33	22	20	140	2	4	139	236	1805
2 Branches of third (non-EU/EEA) countries	1	0		1	0	1	0	0	5	3	2		1	2	0	0	0	1	4		0		1			0	12	34
1 + 2 Total under national supervision	18	52	18	19	17	81	8	19	229	269	33	15	121	73	9	6	29	36	178	33	22	20	141	2	4	139	248	1839
3 Branches of EU/EEA countries	18	44	7	3	13	40	4	7		60	16	12	27	59	5	9	10	6		11	24	9	49	13	1	27		474
1 + 2 + 3 Total activity in the country	36	96	25	22	30	121	12	26	229	329	49	27	148	132	14	15	39	42	178	44	46	29	190	15	5	166	248	2313
Branches in EU/EEA countries	17	31		4	1	5	3	0		118		2	29	4	5	13	1			1	1		24			27		286
Branches in third (non-EU/EEA) countries	1	1		1	0	1	0	0		13			6	2	0		7					0				1		33
<b>Composite enterprises</b>																												
1 National enterprises	28	23		3	15		0	0	40		11	10		14			0	3			7	10	47	12	8		16	247
2 Branches of third (non-EU/EEA) countries	0	0			0		0	0	0		0			0			0				1		1				2	4
1 + 2 Total under national supervision	28	23		3	15		0	0	40		11	10		14			0	3			8	10	48	12	8		18	251
3 Branches of EU/EEA countries	0	2		1	0		0	0			0	1		10			3				4		1	2	2			26
1 + 2 + 3 Total activity in the country	28	25		4	15		0	0	40		11	11		24		0	3	3			12	10	49	14	10		18	277
Branches in EU/EEA countries	8	8			2		0	0				4		6			0				2	1	0		1			32
Branches in third (non-EU/EEA) countries	0	0			0		0	0						7			0				1		0					8
<b>Reinsurance enterprises</b>																												
1 National enterprises	3	2	1	1	1	9	0	0	19	33			102	0	0		242	7	16		1		2		2	3	4	448
2 Branches of third (non-EU/EEA) countries	0	0			0		0	0	0	1			0	0	0		0				0		0			0	0	1
1 + 2 Total under national supervision	3	2	1	1	1	9	0	0	19	34	0	0	102	0	0	0	242	7	16	0	1	0	2	0	2	3	4	449
3 Branches of EU/EEA countries	1	0			0	0	0	0					0	8	0	0	0				0		5					14
1 + 2 + 3 Total activity in the country	4	2	1	1	1	9	0	0	19	34	0	0	102	8	0	0	242	7	16	0	1	0	7	0	2	3	4	463
Branches in EU/EEA countries	0	0		1	0	0	0	0					16	0	0		8				0		0			0		25
Branches in third (non-EU/EEA) countries	0	0		3	0	0	0	0					7	0	0		0				0		0			0		10
<b>Total</b>																												
1 National enterprises	51	95	35	28	36	134	12	29	346	394	52	37	283	142	12	11	316	52	234	61	44	42	279	20	18	181	374	3318
2 Branches of third (non-EU/EEA) countries	1	0	0	2	0	1	0	0	5	6	3	0	2	2	0	0	0	1	4	0	1	0	2	0	0	0	15	45
1 + 2 Total under national supervision	52	95	35	30	36	135	12	29	351	400	55	37	285	144	12	11	316	53	238	61	45	42	281	20	18	181	389	3363
3 Branches of EU/EEA countries	22	54	9	4	16	46	5	12	0	78	18	13	35	95	10	14	15	6		13	34	11	71	17	3	32	0	633
1 + 2 + 3 Total activity in the country	74	149	44	34	52	181	17	41	351	478	73	50	320	239	22	25	331	59	238	74	79	53	352	37	21	213	389	3996
Branches in EU/EEA countries	25	40	0	6	3	7	6	0	0	127	0	7	72	10	5	2	40	1		3	4	1	35	1	2	37	0	434
Branches in third (non-EU/EEA) countries	1	1	0	5	0	2	0	0	0	13	0	0	13	10	0	0	9	0		0	1	0	0	0	0	1	0	56

Note: AT: Austria; BE: Belgium; BU: Bulgaria; CY: Cyprus; CZ: Czech Republic; DK: Denmark; EE: Estonia; FI: Finland; FR: France; DE: Germany; GR: Greece; HU: Hungary; IE: Ireland; IT: Italy; LV: Latvia; LT: Lithuania; LU: Luxembourg; MT: Malta; NL: Netherlands; PL: Poland; PT: Portugal; RO: Romania; ES: Spain; SK: Slovakia; SI: Slovenia; SE: Sweden; and GB: United Kingdom.

Source: Information provided by the European Commission.

Table A4. 3 EU security market capitalization, by member State<sup>a</sup>

(€)

	Quoted shares issued			
	Total	MFIs	Non-MFI corporations	
			Financial corporations other than MFIs	Non-financial corporations
<b>Euro area</b>	<b>4,407,151</b>	<b>395,749</b>	<b>338,207</b>	<b>3,673,194</b>
Austria	80,333	17,596	6,777	55,960
Belgium	214,639	0	20,181	194,458
Cyprus	2,134	784	272	1,078
Estonia	1,648	0	0	1,648
Finland	117,741	2,830	14,530	100,381
France	1,253,938	104,758	47,302	1,101,878
Germany	1,125,392	53,898	97,803	973,691
Greece	32,961	3,083	784	29,094
Ireland	196,699	15,613	12,925	168,161
Italy	355,427	61,649	38,220	255,558
Luxembourg	99,143	0	50,730	48,413
Malta	2,743	1,605	90	1,048
Netherlands	448,770	647	38,444	409,680
Portugal	45,852	5,545	78	40,229
Slovakia	3,419	1,217	0	2,201
Slovenia	4,571	74	489	4,008
Spain	421,741	126,449	9,583	285,709
<b>Non-euro area</b>	<b>2,565,079</b>	<b>114,530</b>	<b>416,048</b>	<b>2,034,502</b>
Bulgaria	6,354	438	1,566	4,350
Czech Republic	29,503	4,908	50	24,545
Denmark	138,412	12,833	6,591	118,988
Hungary	14,474	2,962	135	11,377
Lithuania	829			829
Latvia	3,064	109	100	2,855
Poland	99,205	32,695	8,412	58,098
Romania	11,506	2,132	235	9,139
Sweden	374,506	58,334	25,320	290,852
United Kingdom	1,887,226	120	373,638	1,513,468
<b>Total</b>	<b>6,972,230</b>	<b>510,279</b>	<b>754,255</b>	<b>5,707,696</b>

	Securities other than shares issued				
	Total	MFIs (including euro system)	Non-MFI corporations		General government
			Financial corporations other than MFIs	Non-financial corporations	
<b>Euro area</b>	<b>16,827,169</b>	<b>5,514,315</b>	<b>3,264,770</b>	<b>984,318</b>	<b>7,063,765</b>
Austria	489,821	232,051	6,031	58,036	193,703
Belgium	573,286	68,806	103,114	36,445	364,922
Cyprus	16,459	5,573	1,276	173	9,437

	Securities other than shares issued				
	Total	MFIs (including euro system)	Non-MFI corporations		General government
			Financial corporations other than MFIs	Non-financial corporations	
Estonia	1,466	4	16	1,194	252
Finland	214,173	90,578	3,023	31,441	89,131
France	3,471,636	1,215,194	230,933	458,626	1,566,883
Germany	3,338,168	1,439,244	124,465	106,389	1,668,070
Greece	216,716	71,530	4,280	1,619	139,287
Ireland	1,010,938	84,591	832,765	2,400	91,182
Italy	2,993,825	957,591	233,001	105,660	1,697,573
Luxembourg	529,243	63,532	438,256	22,455	5,000
Malta	5,743	394	252	486	4,611
Netherlands	1,787,692	574,617	783,639	98,497	330,939
Portugal	300,992	98,529	34,280	41,996	126,187
Slovakia	37,597	3,804	68	576	33,149
Slovenia	20,074	2,247	49	812	16,966
Spain	1,819,339	606,030	469,323	17,512	726,474
<b>Non-euro area</b>	<b>5,724,794</b>	<b>2,054,430</b>	<b>941,266</b>	<b>616,076</b>	<b>2,113,023</b>
Bulgaria	4,851	143	245	456	4,007
Czech Republic	88,310	27,648	332	7,705	52,624
Denmark	675,630	552,182	397	18,967	104,083
Hungary	76,755	21,992	232	2,086	52,445
Lithuania	3,028	786		31	2,210
Latvia	10,520	350	9	112	10,048
Poland	208,256	31,439	765	13,377	162,675
Romania	24,727	224	0	0	24,503
Sweden	623,864	434,276	5,009	63,585	120,995
United Kingdom	4,008,853	985,389	934,275	509,757	1,579,433
<b>Total</b>	<b>22,551,963</b>	<b>7,568,745</b>	<b>4,206,036</b>	<b>1,600,394</b>	<b>9,176,788</b>

a Data are from November 2012 for euro-area member States and December 2011 for non-euro-area member States.

Note: MFI: monetary financial institutions.

Source: Information provided by the European Commission.

**Table A4. 4 Total assets under management by pension funds, 2010 and 2011**

(€ million)

	2010	2011
Austria	15,734	16,046
Belgium	2,043	2,351
Bulgaria	1,178	1,622
Cyprus	..	..
Czech Republic	9,192	10,066
Denmark	69,824	72,517
Estonia	1,160	..
Finland	4,681	4,744
France	0	0
Germany	1,043	1,185
Greece	0	0
Hungary	14,854	4,114
Ireland	74,331	61,278
Italy	30,110	30,989
Latvia	161	173
Lithuania	1,145	1,209
Luxembourg	888	916
Malta	0	0
Netherlands	801,028	870,642
Poland	55,776	54,914
Portugal	19,724	16,074
Romania	1,110	1,618
Slovakia	4,872	5,789
Slovenia	1,593	1,636
Spain	87,030	84,819
Sweden	32,294	34,995
United Kingdom	1,504,342	1,530,171

.. Not available.

Source: ECB online information. Viewed at: <http://sdw.ecb.europa.eu/reports.do?node=1000002869>.

**Table A4. 5 Transposition of financial directives**

Description	Directive No.	Transposition deadline	Member States having transposed the directive
Statutory audits of annual accounts and consolidated accounts	2006/43/EC	29.06.2008	All
Amendment to accounting directives	2006/46/EC	05.09.2008	All
Requirement of an independent expert's report (amendment)	2007/63/EC	31.12.2008	All
Procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (amendments)	2007/44/EC	21.03.2009	All
Deposit-guarantee schemes (amendment)	2009/14/EC	31.12.2010	All
Exercise of certain rights of shareholders in listed companies	2007/36/EC	03.08.2009	All, except 1
Payment services in the internal market	2007/64/EC	01.11.2009	All
Amendments to the Capital Requirements Directive	2009/111/EC	31.10.2010	All
Settlement finality (amendments)	2009/44/EC	30.12.2010	All
Amendments to the Capital Requirements Directive	2010/76/EU	01.01.2011	All
Certain disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts (amendments)	2009/49/EC	31.12.2011	All, except 17
Taking up, pursuit, and prudential supervision of the business of electronic money institutions	2009/110/EC	30.04.2011	All, except 5
Undertakings for collective investment in transferable securities (UCITS) (recast)	2009/65/EC	30.06.2011	All, except 8
Reporting and documentation requirements in the case of mergers and divisions (amendments)	2009/109/EC	30.06.2011	All
Directive amending financial services sectoral legislation to ensure effective operation of the European System of Financial Supervisors (ESFS) (Omnibus I)	2010/78/EU	31.12.2011	All, except 22
Prospectus Directive	2010/73/EU	01.07.2012	All, except 25
Revision of Financial Conglomerates Directive	2011/89/EU	10.06.2013	-
Taking-up and pursuit of the business of insurance and reinsurance (Solvency II)	2009/138/EC	30.06.2013	-
Alternative Investment Fund Managers Directive (AIFMD)	2011/61/EC	22.07.2013	-

Source: Information provided by the European Commission.

Table A4. 6 Employment in water and sewerage services, 2010-11

	Water collection, treatment, and supply				Sewerage, waste management, and remediation activities			
	2010		2011		2010		2011	
	Employees ('000)	% of total employment	Employees ('000)	% of total employment	Employees ('000)	% of total employment	Employees ('000)	% of total employment
Austria	2.5	0.06	2.6	0.06	18.3	0.45	18.1	0.44
Belgium	7.8	0.17	8.0	0.18	17.8	0.40	17.8	0.39
Bulgaria	..	..	..	..	..	..	..	..
Cyprus	0.4	0.10	0.4	0.10	2.1	0.54	2.1	0.53
Czech Republic	18.1	0.36	18.2	0.36	37.1	0.73	37.5	0.74
Denmark	3.0	0.11	..	..	10.0	0.35	..	..
Estonia	1.3	0.24	1.9	0.32	1.0	0.18	1.9	0.32
Finland	2.8	0.11	2.7	0.11	10.1	0.41	10.3	0.41
France	26.1	0.10	..	..	116.3	0.43	..	..
Germany	37.0	0.09	..	..	196.0	0.48	..	..
Greece	8.8	0.19	7.1	0.16	22.2	0.47	20.8	0.47
Hungary	26.8	0.66	25.8	0.63	24.4	0.60	22.9	0.56
Ireland	2.0	0.11	2.8	0.15	9.9	0.54	8.8	0.49
Italy	36.7	0.15	..	..	152.0	0.62	..	..
Latvia	2.0	0.21	1.8	0.21	6.9	0.74	5.4	0.63
Lithuania	5.6	0.42	6.3	0.46	5.6	0.42	6.8	0.50
Luxembourg	0.5	0.14	0.5	0.14	2.1	0.58	2.2	0.59
Malta	0.8	0.49	0.8	0.48	0.7	0.43	0.7	0.42
Netherlands	6.3	0.07	6.2	0.07	31.8	0.37	31.5	0.36
Poland	..	..	..	..	..	..	..	..
Portugal	13.7	0.28	..	..	27.9	0.57	..	..
Romania	38.4	0.42	..	..	71.9	0.79	..	..
Slovakia	10.9	0.50	10.8	0.49	11.9	0.55	12.1	0.55
Slovenia	4.2	0.44	4.0	0.42	5.3	0.55	5.6	0.59
Spain	..	..	..	..	..	..	..	..
Sweden	..	..	..	..	..	..	..	..
United Kingdom	..	..	..	..	..	..	..	..
<b>Total</b>	<b>255.7</b>	<b>0.11</b>	<b>99.9</b>	<b>..</b>	<b>781.3</b>	<b>0.35</b>	<b>204.5</b>	<b>..</b>

.. Not available.

Source: Information provided by the European Commission.



**Table A4. 7 Modalities of private sector participation in the management of water utilities in selected member States**

Member State	Private sector participation	Member State	Private sector participation
Austria	None	Greece	Build, operate, and transfer (BOT) Joint ventures
Belgium - Brussels - Flanders - Wallonia	Build, operate, own, and transfer (BOOT) Water services for industry None	Hungary	Management contract and lease (typical at small systems) Share in operating company and lease and company owning the system Full concession
Cyprus	BOOT (e.g. desalination plants)	Ireland	Design and build Design, build, and operate (DBO) Design, build, finance, and operate (DBFO)
Estonia	Sales of shares in municipal water company Operating contracts	Luxembourg	Private contractors operate public-owned: car parks; power plants; and waste-to-energy plant Private carriers operate public communication routes
Finland	Design, build, finance, and operate (DBFO) <sup>a</sup>	Netherlands	Concession (design, finance, build, and maintain (DFBM)/DBFO/BOT) Joint development
France	Concession "Affermage" "Affermage à îlots" "Régie intéressée" (in certain cases) "Gérance" (in certain cases)	Spain	Mixed economy company Concessions <sup>b</sup>
Germany	"Betriebmodell" "Betriebsführungsmodell" Concession "Kooperationsmodell"	United Kingdom - England & Wales - Northern Ireland & Scotland	Privatization Water and waste water projects

a However, they are not largely used in water and waste water services.

b There are two other contractual forms: "*gestión interesada*" and "*concierto*" (Royal Decree No. 2/2000). Moreover, different types of leasing contracts between private companies and local authorities still exist.

Source: Eureau (2004), *Contribution to the Green Paper on Public-Private Partnership and Community Law on Public Contracts and Concessions – COM(2004) 327*. Viewed at: [http://eureau.org/sites/eureau.org/files/documents/2004.07.30-eureau\\_answer\\_green\\_paper\\_on\\_ppp\\_final.pdf](http://eureau.org/sites/eureau.org/files/documents/2004.07.30-eureau_answer_green_paper_on_ppp_final.pdf).

**Table A4. 8 Rules of the public procurement directives applicable to public contracts and concessions**

	Public contracts		Work concessions		Service concessions in classical and utilities sectors
	"Classical" sectors	"Utilities" sector	"Classical" sectors	"Utilities" sector	
Publication in the <i>Official Journal of the EU</i>	X	X	X		
Minimum deadline for submission	X	X	X		
Rules on additional services	X	X	X		
Rules on sub-contracting			X		
Remedies	X	X	X		
Rules on selection criteria	X	X			
Provisions on technical specifications	X	X			
Rules on award criteria	X	X			
Publication of contract award notices	X	X			
Rules on choice of procedures	X	X			

Source: European Commission document SEC(2011) 1588 final, 20 December 2011. Viewed at: [http://ec.europa.eu/internal\\_market/publicprocurement/docs/concessions/SEC2011\\_1588\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/concessions/SEC2011_1588_en.pdf).

**Table A4. 9 Summarized trade regimes of environmental services**

Sectors	GATS commitments <sup>a</sup>	FTA commitments	Other agreements	Applied regime (EU level and intra-EU regime only)
Water collection purification and distribution services through mains except steam and hot water	No commitments <sup>b</sup>	<b>EU-CARIFORUM, EU-Korea:</b> no commitments <b>EU-Chile:</b> Market access: 1) Unbound* 2) None, except BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SI, SK: unbound 3) None, except AT, BG, DE, UK, CY, CZ, EE, HU, LV, LT, MT, PL, SI, SK: unbound National treatment: 1) Unbound* 2) None, except BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SI, SK: unbound 3) None, except AT, BG, DE, UK, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SI, SK: unbound	-	Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT</a> ) Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (viewed at: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:en:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:en:PDF</a> )
6.A Sewage services (CPC 9401) <sup>c</sup> (MTN.GNS/W/120 terminology); or Waste water services (CPC 9401) (EU terminology)	Scope: All member States, except EE: 9401; EE: 9401 contracted by private industry 1) All member States: unbound, except EE, LV, LT: none 2) 3) All member States: none, except CY,FI, HU, MT,PL, RO: unbound	<b>EU-CARIFORUM:</b> 1) Unbound, except for consulting services 2) 3) none <b>EU-Chile:</b> (scope: all member States, except BG: CPC 9401, part of 18000. BG: CPC 9401) 1) All member States, except EE, LT, LV: unbound; EE, LT, LV: none* 2) 3) HU, RO: unbound <b>EU-Korea:</b> 1) unbound except for consulting services 2) none 3) none	-	Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ( <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT</a> ) Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ( <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:en:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:en:PDF</a> )
6.B Refuse disposal services (CPC 9402) (MTN.GNS/W/120 terminology); or B. Solid/hazardous waste management, excluding cross-border transport of hazardous waste a) Refuse disposal services (CPC 9402) (EU terminology)	Scope: all member States, except EE: 9402; EE: 9402 contracted by private industry 1) All member States: unbound, except EE, HU: none 2) 3) All member States: none, except CY,MT,PL, RO: unbound	<b>EU-CARIFORUM:</b> 1) Unbound, except for consulting services 2) 3) None <b>EU-Chile:</b> Market access +national treatment: 1) All member States, except EE, HU: unbound; EE, HU: none 2) 3) RO: unbound <b>EU-Korea:</b> 1) Unbound, except for consulting services 2) 3) None	-	Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts, and public service contracts ( <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:en:NOT</a> )

Sectors	GATS commitments <sup>a</sup>	FTA commitments	Other agreements	Applied regime (EU level and intra-EU regime only)
6.C Sanitation and similar services (CPC 9403) (MTN.GNS/W/120 terminology); or Solid/hazardous waste management, excluding cross-border transport of hazardous waste b) Sanitation and similar services (CPC 9403) (EU terminology)	1) All member States: unbound, except EE, HU, LT: none 2) 3) All member States: none, except CY, MT, PL, FI, RO: unbound	<b>EU-CARI FORUM:</b> 1) Unbound, except for consulting services 2) 3) None <b>EU-Chile:</b> Market access + national treatment: 1) All member States, except EE, HU: unbound; EE, HU: none 2) 3) RO: unbound <b>EU-Korea:</b> 1) Unbound, except for consulting services 2) 3) None	-	1) 2) 3) None via the freedom of establishment and the freedom to provide services instituted by the EU treaty
6.D Other environmental services 6.D.a Cleaning services of exhaust gases (CPC 9404) (MTN.GNS/W/120 terminology); or Protection of ambient air and climate (CPC 9404) (EU terminology)	Scope: all member States, except BG, PL: CPC 9404; BG: monitoring services of exhaust gases (part of CPC 9404); PL: part of CPC 9404 1) All member States: unbound, except EE, FI, LT, PL, RO: none 2) 3) All member States: none, except CY, CZ, HU, MT, SK, SI: unbound and SE government-owned monopoly for control services of exhaust-gas from cars and trucks. Such services must be offered on a non-profit basis (3) only)	<b>EU-CARI FORUM:</b> 1) Unbound except for consulting services 2) 3) None <b>EU-Chile:</b> scope: all member States, except BG: CPC 9404; BG: monitoring services of exhaust gases (part of CPC 9404) Market access and national treatment: 1) All member States, except EE, LT, PL, RO: unbound; EE, LT, PL, RO: none 2) None Market access: 3) SE: government-owned monopoly for control services of exhaust gas from cars and trucks. Such services must be offered on a non-profit basis National treatment: 3) None <b>EU-Korea:</b> 1) Unbound, except for consulting services 2) 3) none	-	1) 2) 3) None via the freedom of establishment and the freedom to provide services instituted by the EU treaty

Sectors	GATS commitments <sup>a</sup>	FTA commitments	Other agreements	Applied regime (EU level and intra-EU regime only)
6.D.b Noise abatement services (CPC 9405) (MTN.GNS/W/120 terminology); or Noise and vibration abatement (CPC 9405) (EU terminology)	<p>Scope: All member States, except BG, PL: CPC 9405; BG: noise pollution monitoring services (part of CPC 9405); PL: part of CPC 9405</p> <p>1) All member States: unbound, except EE, FI, LT, PL, RO: none 2) 3) All member States: unbound, except AT, BG,EE, FI, LV, LT, PL, SE, RO: none</p>	<p><b>EU-CARIFORUM:</b> 1) Unbound, except for consulting services 2) 3) None</p> <p><b>EU-Chile:</b> scope: all member States, except BG: CPC 9405. BG: pollution monitoring services of exhaust gases (part of CPC 9405) Market access and national treatment: 1) All member States, except EE, LT, PL, RO: unbound; EE, LT, PL, RO: none 2) 3) None, except for CY, CZ, HU, SK, SI, UK: unbound</p> <p><b>EU-Korea:</b> 1) Unbound, except for consulting services 2) 3) None</p>	-	1) 2) 3) None via the freedom of establishment and the freedom to provide services instituted by the EU treaty
6.D.c Nature and landscape protection services (CPC 9406) (MTN.GNS/W/120 terminology); or Protection of biodiversity and landscape a) Nature and landscape protection services (part of CPC 9406); and remediation and clean-up of soil and waters a) Treatment, remediation of contaminated/polluted soil and water (part of CPC 94060) (EU terminology)	<p>Scope: services (all member States, except BG, LT: CPC 9406; BG: Nature protection services (part of CPC 9406); LT: CPC 9406 other than destined to national parks)</p> <p>1) All member States: unbound, except EE, FI, RO: none 2) 3) All member States: none, except CY, CZ, HU, MT,PL, SK: unbound</p>	<p><b>EU-CARIFORUM:</b> 1) Unbound, except for consulting services 2) 3) None</p> <p><b>EU-Chile:</b> scope: BG unbound for protection of biodiversity and landscape nature and landscape protection services (CPC 9406) Market access + national treatment: 1) All member States, except EE, RO: unbound; EE, RO: none 2) 3) BG, HU: unbound</p> <p><b>EU-Korea:</b> 1) unbound except for consulting services 2) 3) none</p>	-	1) 2) 3) None via the freedom of establishment and the freedom to provide services instituted by the EU treaty
6.D.d Other environmental protection services (CPC 9409) (MTN.GNS/W/120 terminology); or Other environmental and ancillary services (CPC 9409) (EU terminology)	<p>Scope: all member States, except PL: CPC 9409; PL: monitoring of environment. Consultancy related to the environmental protection)</p> <p>1) All member States: unbound, except EE, FI, PL, RO: none 2) 3) All member States: none, except BG, CY, CZ, HU, MT, SK, SI: unbound</p>	<p><b>EC-CARIFORUM:</b> 1) Unbound, except for consulting services 2) 3) None</p> <p><b>EU-Chile:</b> scope: part of 94090 Market access + national treatment: 1) All member States, except EE, PL, RO: unbound; EE, PL, RO: none 2) 3) BG, HU: unbound</p> <p><b>EU-Korea:</b> 1) Unbound except for consulting services 2) 3) None</p>	-	1) 2) 3) None via the freedom of establishment and the freedom to provide services instituted by the EU treaty

<sup>a</sup> The description of the commitment is drawn from document S/C/W/273 draft consolidated EU schedule, dated 9 October 2006, which has not yet entered into force. This document constitutes the only source where the commitments appear in a consolidated manner, taking into account the full membership of EU-27.

b The question of the coverage by the GATS of water collection, purification and distribution through mains is disputed among WTO Members. It has no straightforward CPC classification except to a certain extent CPC 18000.

c In the case of EU-Chile, the EU commitment on waste water service refers to both CPC 9401 (sewage services) and to part of CPC 18000.

Note: CPC means the United Nations Provisional Central Products Classification. Restrictions to national treatment are indicated only to the extent that they differ from or add specific restrictions to market access restrictions. GATS mode 4 commitments are not included in this table since they are not directly comparable with FTA mode 4 commitments as they cross-refer to different horizontal commitments. Entries may have been summarized but their substance has been preserved. "Unbound\*" means unbound due to lack of technical feasibility. A Classification heading followed by an asterisk (e.g. CPC51310\*) means "part of" the heading, unless otherwise explicitly stated. The nomenclature used for the first column of the table is that of WTO document MTN.GNS/W/120. The European Economic Area (EEA) and the agreements between EU and Albania, Croatia, FYROM and Montenegro have not been integrated in this comparative table in view of their different nature (deep integration beyond trade concerns) and of their different structure (based on the approximation of law and devoid of schedules of commitments).

In GATS: environmental services: BG: the commitments do not apply to services related to the collection, transportation, storage, secondary use, recycling, restoration, use in the production of energy and materials, and disposal of dangerous waste, refuse and substances. BG: the commitments do not include environmental services supplied in the exercise of governmental authority. BG: These are regulatory, administrative and control services by government and municipal bodies related to environmental issues. SE: the offer does not include public-works functions whether owned and operated by municipalities, state or federal governments or contracted out by these governments.

In EU-Chile: BG: the commitments do not include environmental services supplied in the exercise of governmental authority (3). SE: the offer does not include public-works functions whether owned and operated by municipalities, state or federal governments or contracted out by these governments.

Source: WTO Secretariat, based on information provided by the European Commission.

**Table A4. 10 Summarized trade regimes of air transport services**

Sectors	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
Maintenance and repair of aircraft	<p>1) All member States: unbound, except AT, EE, LV, HU, PL: none</p> <p>2) All member States: none, except CY and MT: unbound</p> <p>3) All member States: none, except CY, MT: unbound; CZ: corporate seat required in the Czech Republic; SK: corporate seat required in the Slovak Republic; RO: authorization from the Romanian Aeronautical Authority required</p>		<p><b>EU-CARIFORUM, EU-Korea:</b></p> <p>1) BE, BG, CY, CZ, DE, DK, ES, FI, FR, EL, IE, IT, LT, LU, MT, NL, PT, RO, SK, SI, SE, UK: unbound; all others member States: none</p> <p>2) None</p> <p>3) None</p> <p><b>EU-Chile:</b></p> <p>1) All member States, except EE, HU, LV, PL: unbound; EE, HU, LV, PL: none</p> <p>2) All member States: none</p> <p>3) All member States, except CZ, SK, RO: none; CZ, SK: corporate seat is required in a country; RO: authorization from the Romanian Aeronautical Authority is required</p>	<p><b>EU-Korea:</b></p> <p><u>Description:</u> the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement</p> <p><u>Countries to which the measure applies:</u> all countries</p> <p><u>Duration:</u> indefinite</p> <p><u>Justification:</u> needed to protect existing and future international agreements</p>
Selling and marketing of air transport services	<p>Market access:</p> <p>1) All member States, except CY, CZ, HU, LV, LT, MT, PL, SK: none; CY, CZ, HU, LV, LT, MT, PL, SK: unbound</p> <p>2) All member States, except CY, HU, LV, LT, MT, PL: none; CY, HU, LV, LT, MT, PL: unbound</p> <p>3) All member States, except CY, CZ, HU, LV, LT, MT, PL, RO, SK: none; CY, CZ, HU, LV, LT, MT, PL, RO, SK: unbound</p> <p>National treatment:</p> <p>1) All member States: for distribution through CRS of air transport services provide by CRS parent carrier: unbound, except CY, CZ, HU, LV, LT, MT, PL, SK: unbound; BG, RO: none</p> <p>2) All member States: none, except CY, HU, LV, LT, MT, PL: unbound</p> <p>3) All member States: for distribution through CRS of air transport services provide by CRS parent carrier: unbound, except CY, CZ, HU, LV, LT, MT, PL, SK: unbound; BG : none</p>	<p>All member States:</p> <p><u>Description:</u> provision of Article 7 of Regulation (EC) No. 2299/89, as amended by Regulation (EC) No. 3089/93, whereby the obligations of CRS system vendors or of parent and participating air carriers shall not apply where equivalent treatment to that applied under the Regulation is not accorded in the country of origin of the parent carrier or of the system vendor. <u>Countries to which the measure applies:</u> all countries where a CRS system vendor or a parent air carrier is located. <u>Duration:</u> indefinite. <u>Justification:</u> the need for the exemption results from the insufficient development of multilaterally agreed rules for the operation of CRS</p> <p><b>BG:</b></p> <p><u>Scope:</u> sales and marketing services for air transport, including CRS. <u>Description:</u> the obligations relating to transport services shall not apply where equivalent treatment of Bulgarian suppliers of like services is not accorded in the country of origin of the foreign service supplier. <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> the aim of the application of such a measure is to guarantee equal access to the market of other countries for Bulgarian suppliers of such kinds of services</p> <p><b>LV, LT, PL:</b></p> <p><u>Description:</u> preferential market access</p>	<p><b>EU-CARIFORUM:</b></p> <p>1) 2) 3) All member States: EC specific obligations for services suppliers operating computer reservation systems that are owned or controlled by air carriers + BG (3 only): unbound for direct branching (incorporation is required)</p> <p><b>EU-Korea:</b></p> <p>1) 2) 3) All member States: where air carriers of the EU are not accorded equivalent treatment to that provided in the EU by CRS services suppliers in Korea, or where CRS services suppliers of the EU are not accorded equivalent treatment to that provided in the EU by air carriers in Korea, measures may be taken to accord equivalent treatment, respectively, to the air carriers of Korea by the CRS services suppliers in the EU, or to the CRS services suppliers of Korea by the air carriers in the EU; BG (3 only): unbound for direct branching (incorporation is required)</p> <p><b>EU-Chile:</b></p> <p>Market access:</p> <p>1) 2) None</p> <p>3) All member States, except RO: none; RO: unbound</p> <p>National treatment:</p> <p>1) All member States, except BG, RO: for distribution through CRS of air transport</p>	<p><b>EU-Korea:</b></p> <p>All member States:</p> <p><u>Description:</u> provision of Article 7 of Regulation (EC) No. 2299/89, as amended by Regulation (EC) No. 3089/93, whereby the obligations of CRS system vendors or of parent and participating air carriers shall not apply where equivalent treatment to that applied under the Regulation is not accorded in the country of origin of the parent carrier or of the system vendor. <u>Countries to which the measure applies:</u> all countries where a CRS system vendor or a parent air carrier is located</p> <p><u>Duration:</u> indefinite. <u>Justification:</u> the need for the exemption results from the insufficient development of multilaterally agreed rules for the operation of CRS)</p>



Sectors	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
		<p>resulting from bilateral air transport agreements. <u>Countries to which the measure applies</u>: all countries. <u>Duration</u>: indefinite. <u>Justification</u>: reciprocal provisions concerning supply of air transport services as a result of bilateral air transport agreements</p> <p><b>RO:</b> <u>Description</u>: the right for sales and marketing services for air transport is granted on a reciprocal basis. <u>Countries to which the measure applies</u>: all countries. <u>Duration</u>: indefinite. <u>Justification</u>: the reciprocity requirement is the reason for the exemption</p>	<p>services provide by CRS parent carrier: unbound; BG, RO: none</p> <p>2) None</p> <p>3) All member States, except BG and RO: for distribution through CRS of air transport services provide by CRS parent carrier: unbound; BG: none; RO: unbound</p>	
Computer reservations systems <sup>a</sup>	<p>Market access:</p> <p>1) All member States, except CY, CZ, EE, LV, LT, MT, PL, SK: none; CY, CZ, EE, LV, LT, MT, PL, SK: unbound</p> <p>2) All member States, except CY, EE, LV, LT, MT, PL: none; CY, EE, LV, LT, MT, PL: unbound</p> <p>3) All member States, except CY, CZ, EE, LV, LT, MT, PL, SK: none; CY, CZ, EE, LV, LT, MT, PL, SK: unbound</p> <p>National treatment:</p> <p>1) All member States: for obligations of parent or participating carriers in respect of a CRS controlled by an air carrier of one or more third countries: unbound, except CY, CZ, EE, LV, LT, MT, PL, SK: unbound; BG, RO: none</p> <p>2) All member States: none, except CY, EE, LV, LT, MT, PL: unbound</p> <p>3) All member States: for obligations of parent or participating carriers in respect of a CRS controlled by an air carrier of one or more third countries: unbound, except CY, CZ, EE, LV, LT, MT, PL, SK: unbound; BG, RO: none</p>	<p><b>All Member States:</b> <u>Description</u>: provision of Article 7 of Regulation (EC) No. 2299/89, as amended by Regulation (EC) No. 3089/93, whereby the obligations of CRS system vendors or of parent and participating air carriers shall not apply where equivalent treatment to that applied under the Regulation is not accorded in the country of origin of the parent carrier or of the system vendor. <u>Countries to which the measure applies</u>: all countries where a CRS system vendor or a parent air carrier is located. <u>Duration</u>: indefinite. <u>Justification</u>: the need for the exemption results from the insufficient development of multilaterally agreed rules for the operation of CRS</p> <p><b>BG:</b> <u>Scope</u>: sales and marketing services for air transport, including CRS. <u>Description</u>: the obligations relating to transport services shall not apply where equivalent treatment of Bulgarian suppliers of like services is not accorded in the country of origin of the foreign service supplier. <u>Countries to which the measure applies</u>: all countries. <u>Duration</u>: indefinite. <u>Justification</u>: the aim of the application of such a measure is to guarantee equal access to the market of other countries for Bulgarian suppliers of such kinds of services</p>	<p><b>EU-CARIFORUM</b></p> <p>1) 2) 3) All member States: EC specific obligations for services suppliers operating computer reservation systems that are owned or controlled by air carriers; BG (3 only): unbound for direct branching (incorporation is required)</p> <p><b>EU-Chile:</b> Market access 1) 2) 3) None National treatment: 1) 3) All member States, except BG and RO: for obligations of parent or participating carriers in respect of a CRS controlled by an air carrier of one or more third countries: unbound; BG, RO: none 2) None</p> <p><b>EU-Korea:</b> 1) 2) 3) All member States: where air carriers of the EU are not accorded equivalent treatment to that provided in the EU by CRS services suppliers in Korea, or where CRS services suppliers of the EU are not accorded equivalent treatment to that provided in the EU by air carriers in Korea, measures may be taken to accord equivalent treatment, respectively, to the air carriers of Korea by the CRS services suppliers in the EU, or to the CRS services suppliers of Korea by the air carriers in the EU; BG (3 only): unbound for direct branching (incorporation is required)</p>	<p><b>EU-Korea:</b> All member States: <u>Description</u>: provision of Article 7 of Regulation (EC) No. 2299/89, as amended by Regulation (EC) No. 3089/93, whereby the obligations of CRS system vendors or of parent and participating air carriers shall not apply where equivalent treatment to that applied under the Regulation is not accorded in the country of origin of the parent carrier or of the system vendor. <u>Countries to which the measure applies</u>: all countries where a CRS system vendor or a parent air carrier is located. <u>Duration</u>: indefinite. <u>Justification</u>: the need for the exemption results from the insufficient development of multilaterally agreed rules for the operation of CRS</p>

Sectors	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
Rental of aircraft with crew (CPC 734)	<p>1) 2) All member States: unbound, except (in MA) PL: none except that aircraft used by Community air carriers have to be registered in the member State licensing the air carrier or elsewhere in the Community. Waivers can be granted for short-term lease contracts or under exceptional circumstances and (in NT) PL: none</p> <p>3) All member States: unbound, except (in MA) PL: none except that aircraft used by Community air carriers have to be registered in the aircraft register of that member State, the aircraft must be owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific criteria regarding ownership of capital and control (including nationality of directors); and (in NT) PL: none</p>		<p><b>EU-CARIFORUM:</b></p> <p>1) 2) All member States: aircraft used by Community air carriers have to be registered in the member State licensing the air carrier or elsewhere in the Community. Waivers can be granted for short-term lease contracts or under exceptional circumstances</p> <p>3) Aircraft used by Community air carriers have to be registered in the aircraft register of that member State, the aircraft must be owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific criteria regarding ownership of capital and control (including nationality of directors). Waivers can be granted for short-term lease contracts or under exceptional circumstances; BG: unbound for direct branching (incorporation is required)</p> <p><b>EU-Korea:</b></p> <p>1) 2) All member States: aircraft used by an air carrier of the EU have to be registered in the member State of the EU licensing the air carrier or, if the licensing member State so allows, elsewhere in the EU. To be registered, aircraft may be required to be owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific criteria regarding ownership of capital and control. By exception, aircraft registered in Korea may be leased by a Korean air carrier to an air carrier of the EU in specific circumstances for the air carrier of the European Union's exceptional needs, seasonal capacity needs, or needs to overcome operational difficulties, which cannot reasonably be satisfied through leasing aircraft registered within the EU, and subject to obtaining the approval of a limited duration from the member State of the EU licensing the air carrier</p> <p>3) All member States: aircraft used by an air carrier of the EU have to be registered in the member State of the EU licensing the air carrier or, if the licensing member</p>	<p><b>EU-Korea:</b></p> <p><u>Description:</u> the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement. <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> needed to protect existing and future international agreements</p>

Sectors	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
			<p>State so allows, elsewhere in the EU. To be registered, aircraft may be required to be owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific criteria regarding ownership of capital and control. Aircraft must be operated by an air carrier owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific criteria regarding ownership of capital and control</p> <p><b>EU-Chile:</b> Market access: 1) 2) All member States, except PL: unbound; PL: none, except that aircraft used by Community air carriers have to be registered in the Member State licensing the air carrier or elsewhere in the Community. Waivers can be granted for short-term lease contracts or under exceptional circumstances 3) All member States, except PL: unbound; PL: none, except that aircraft used by Community carriers have to be registered in the aircraft register of that member State, the aircraft must be owned either by natural persons meeting specific nationality criteria or by juridical persons meeting specific regarding ownership of capital and control (including nationality of directors) National treatment: 1) 2) 3) All member States, except PL: unbound; PL: none</p>	
Ground handling services (including catering)	No commitments		<p><b>EU-CARIFORUM:</b> 1) 2) All member States: unbound, except for catering 3) All member States: categories of activities depend of size of airport. The number of providers in each airport can be limited due to available space constraints and to not less than two suppliers for other reasons; BG: unbound for direct branching (incorporation is required) <b>EU-Korea:</b> 1) All member States: unbound, except for catering</p>	<p><b>EU-Korea:</b> <u>Description:</u> the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement <u>Countries to which the measure applies:</u> all countries <u>Duration:</u> indefinite <u>Justification:</u> needed to protect existing and future international agreements</p>

Sectors	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
			<p>2) All member States: none, except BG, CZ, HU, MT, PL, RO, SK, SI: unbound</p> <p>3) All member States: unbound except for national treatment. Categories of activities depend of size of airport. The number of providers in each airport can be limited due to available space constraints and to not less than two suppliers for other reasons; BG: unbound for direct branching (incorporation is required)</p> <p><b>EU-Chile:</b> no commitments</p>	
Storage and warehousing for air transport (part of CPC 742)	<p>1) All member States: unbound, except EE, HU, LV: none</p> <p>2) 3) All member States: none, except BG, CY, CZ, MT, PL, RO, SE, SK: unbound</p>		<p><b>EU-CARIFORUM, EU-Korea:</b></p> <p>1) 2) All member States: none</p> <p>3) All member States: none, except BG: unbound for direct branching (incorporation is required) and PL for storage services of frozen and refrigerated goods and bulk storage service of liquids or gases, categories of activities depend on size of airport. The number of providers in each airport can be limited due to available space constraints and to not less than two suppliers for other reasons</p> <p><b>EU-Chile:</b></p> <p>1) All member States: unbound*</p> <p>2) 3) All member States: none, except BG, CY, CZ, MT, LT, PL, RO, SK and SE: unbound</p>	<p><b>EU-Korea:</b></p> <p><u>Description:</u> the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement. <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> needed to protect existing and future international agreements</p>
Freight transport agency services (part of CPC 748)	<p>Market access:</p> <p>1) 2) All member States: none, except CY, CZ, HU, MT, PL, RO, SK, SE: unbound; and BG: none other than commercial presence required</p> <p>3) All member States: none, except CY, CZ, HU, MT, PL, RO, SK, SE: unbound; and BG: none other than foreign persons can only supply services through participation in Bulgarian companies with 49% limitation on equity participation and through branches</p> <p>National treatment:</p> <p>1) All member States, except CY, CZ, HU, MT, PL, RO, SE, SI, SK: none; CY, CZ, HU, MT, PL, RO, SK, SE: unbound; SI: none other than customs clearance is subject to limitation to juridical persons established in the Republic of Slovenia</p>		<p><b>EU-CARIFORUM:</b></p> <p>1) 2) All member States: none</p> <p>3) All member States: none, except BG unbound for direct branching (incorporation is required); and SI: only juridical persons established in the Republic of Slovenia (no branches) can perform custom clearance</p> <p><b>EU-Korea:</b></p> <p>1) 2) All member States: none</p> <p>3) All member States: none, except BG foreign persons can only supply services through participation in BG companies with 49% limitation on equity participation and through branches; and SI: only juridical persons established in the Republic of Slovenia (no branches) can perform custom clearance and CY, CZ, HU, MT, PL, RO, SK: unbound</p>	<p><b>EU-Korea:</b></p> <p><u>Description:</u> the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement. <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> needed to protect existing and future international agreements</p>

Sectors	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
	2) 3) All member States, except CY, CZ, HU, MT, PL, RO, SE, SI, SK: none; CY, CZ, HU, MT, PL, RO, SK, SE: unbound; SI: none other than customs clearance is subject to limitation to juridical persons established in the Republic of Slovenia		<b>EU-Chile:</b> Market access: 1) 2) CY, CZ, HU, MT, PL, RO, SK, SE: unbound; BG: commercial presence required 3) CY, CZ, HU, MT, PL, SK, SE: unbound; BG: foreign persons can only supply services through participation in Bulgarian companies with 49% limitation on equity participation and through branches National treatment: 1) CY, CZ, HU, MT, PL, RO, SK, SE: unbound; SI: none other than customs clearance is subject to limitation to juridical person established in the Republic of Slovenia 2) CY, CZ, HU, MT, PL, RO, SK, SE: unbound 3) CY, CZ, HU, MT, PL, RO, SK, SE: unbound; SI: none other than customs clearance is subject to limitation to juridical persons established in the Republic of Slovenia	
Airport management	No commitments		<b>EU-CARIFORUM:</b> 1) All member States: unbound 2) All member States: none 3) All member States: none, except BG: unbound for direct branching (incorporation is required); and PL foreign participation is limited to 49% <b>EU-Korea:</b> no commitments <b>EU-Chile:</b> no commitments	<b>EU-Korea:</b> <u>Description:</u> the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement. <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> needed to protect existing and future international agreements

a For HU, the scope is limited to computer reservations systems (as defined in paragraph 6(c) of the Annex on Air Transport Services.

Note: CPC means the United Nations Provisional Central Products Classification. Restrictions to national treatment are indicated only to the extent that they differ from or add specific restrictions to market access restrictions. GATS mode 4 commitments are not included in this table since they are not directly comparable with FTA mode 4 commitments as they cross-refer to different horizontal commitments. Entries may have been summarized but their substance has been preserved. "Unbound\*" means unbound due to lack of technical feasibility. A Classification heading followed by an asterisk (e.g. CPC51310\*) means "part of" the heading, unless otherwise explicitly stated. The nomenclature used for the first column of the table is that of WTO document MTN.GNS/W/120. The European Economic Area (EEA) and the agreements between EU and Albania, Croatia, FYROM and Montenegro have not been integrated in this comparative table in view of their different nature (deep integration beyond trade concerns) and of their different structure (based on the approximation of law and devoid of schedules of commitments). The description of the commitment is drawn from document S/C/W/273 draft consolidated EU-25 schedule, dated 9 October 2006, which has not yet entered into force; and Schedules BG (S/DCS/W/BRG dated 24 January 2003) and RO (S/DCS/W/ROM dated 24 January 2003); and that of the MFN exemptions from document TN/S/OEECR1, draft offer from the European Union and its member States, dated 29 June 2005, pp. 418-431. Those documents constitute the sources where the commitments and draft MFN exemptions appear in a consolidated manner taking into account the full membership of EU-25 for commitments and for MFN exemptions.

Source: Information provided by the European Commission.

**Table A4. 11 Summarized trade regimes of rail transport services**

Sectors	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
<p>11.E.a Passenger transportation CPC 7111</p>	<p>Market access: 1) All member States: unbound 2) All member States: unbound, except HU: none 3) All member States: unbound, except HU: services may be provided through a contract of concession granted by the state or the local authority National treatment: 1) 2) 3) All member States, except HU: unbound; HU: none</p>	<p><b>CZ, SK:</b> <u>Description:</u> measures that are taken under existing or future agreements and which regulate traffic rights and operating conditions and the provision of transport services in the territory of the Czech Republic, and the Slovak Republic and between the countries concerned <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> to protect the integrity of rail transport infrastructure and the environment and to regulate traffic rights in the territory of the Czech Republic and the Slovak Republic and between the countries concerned <b>BG:</b> <u>Description:</u> measures taken under existing or future agreements which govern access and/or traffic rights and the terms of conduct of this kind of economic activity in the territory of the Republic of Bulgaria or between the countries which are parties to the corresponding agreements. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> protection of the integrity of the infrastructure, as well as environmental protection, and regulation of traffic rights in the territory of the Republic of Bulgaria and between the countries concerned, taking account the regional specificity of these kinds of services</p>	<p><b>EU-CARIFORUM, EU-Korea:</b> 1) All member States: unbound 2) All member States: none 3) All member States: none except BG unbound for direct branching (incorporation is required) <b>EU-Chile:</b> Market access: 1) All member States: unbound 2) All member States, except HU: unbound; HU none 3) All member States, except HU: unbound; HU: services may be provided through a contract of concession granted by the state or the local authorities National treatment: 1) 2) 3) All member States, except HU: unbound; HU: none</p>	<p><b>CZ, BG, SK:</b> <u>Description:</u> measures that are taken under existing or future agreements and which regulate traffic rights and operating conditions and the provision of transport services in the territory of the Bulgarian Republic, the Czech Republic, and the Slovak Republic and between the countries concerned. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> to protect the integrity of rail transport infrastructure and the environment and to regulate traffic rights in the territory of the Czech Republic and the Slovak Republic and between the countries concerned <b>PL:</b> <u>Description:</u> a reciprocity requirement concerning supply of transport services by suppliers of countries concerned, in, into and across the territory of such countries. <u>Countries to which the measure applies:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> system of existing and future reciprocal agreements on transport cooperation (or of similar character), and promotion and protection of foreign investments, implementing, <i>inter alia</i>, transportation quotas resulting from bilaterally agreed system of permits</p>

Sectors	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
11.E.b Freight transportation CPC 7112	Market access: 1) All member States: unbound 2) All member States: unbound, except HU: none 3) All member States: unbound, except HU: services may be provided through a contract of concession granted by the state or the local authority National treatment: 1) 2) 3) All member States, except HU: unbound; HU none	<b>CZ, BG, SK:</b> <u>Description:</u> measures that are taken under existing or future agreements and which regulate traffic rights and operating conditions and the provision of transport services in the territory of the Czech Republic, Bulgaria, and the Slovak Republic and between the countries concerned. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> to protect the integrity of rail transport infrastructure and the environment and to regulate traffic rights in the territory of the Czech Republic and the Slovak Republic and between the countries concerned <b>BG:</b> <u>Description:</u> measures taken under existing or future agreements which govern access and/or traffic rights and the terms of conduct of this kind of economic activity in the territory of the Republic of Bulgaria or between the countries which are parties to the corresponding agreements. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force <u>Duration:</u> indefinite. <u>Justification:</u> protection of the integrity of the infrastructure, as well as environmental protection, and regulation of traffic rights in the territory of the Republic of Bulgaria and between the countries concerned, taking account the regional specificity of this kinds of services	<b>EU-CARIFORUM, EU-Korea:</b> 1) All member States: unbound 2) All member States: none 3) All member States: none, except BG: unbound for direct branching(incorporation is required) <b>EU-Chile:</b> Market access 1) All member States: unbound 2) All member States, except HU: unbound; HU: none 3) All member States, except HU: unbound; HU: services may be provided through a contract of concession granted by the state or the local authorities National treatment: 1) 2) 3) All member States, except HU: unbound; HU: none	<b>CZ, BG, SK:</b> <u>Description:</u> measures that are taken under existing or future agreements and which regulate traffic rights and operating conditions and the provision of transport services in the territory of the Bulgarian republic, the Czech Republic, and the Slovak Republic and between the countries concerned. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> to protect the integrity of rail transport infrastructure and the environment and to regulate traffic rights in the territory of the Czech Republic and the Slovak Republic and between the countries concerned <b>PL:</b> <u>Description:</u> a reciprocity requirement concerning supply of transport services by suppliers of countries concerned, in, into and across the territory of such countries. <u>Countries to which the measure applies:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> system of existing and future reciprocal agreements on transport cooperation (or of similar character), and promotion and protection of foreign investments, implementing, <i>inter alia</i> , transportation quotas resulting from bilaterally agreed system of permits
11.E.c Pushing and towing services CPC 7113	No commitments		<b>EU-CARIFORUM, EU-Korea:</b> 1) All member States: unbound 2) All member States: none 3) All member States: none, except BG: unbound for direct branching (incorporation is required). Participation in Bulgarian companies is limited to 49% <b>EU-Chile:</b> no commitments	



Sectors	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
11.E.d Maintenance and repair of rail transport equipment CPC 8868*	1) All member States: unbound, except EE and HU: none 2) All member States: none, except AT, CY, MT, LV, PL, RO: unbound 3) All member States: none, except AT, CY, CZ, LV, MT, PL, RO, SK: unbound; and (in MA only) SE: operators allowed to establish and maintain their own terminal infrastructure facilities, subject to space and capacity constraints		<b>EU-CARIFORUM, EU-Korea:</b> 1) All member States: unbound, except EE, HU: none 2) All member States: none 3) All member States: none, except LV: state monopoly; and SE: economic needs tests apply when an investor intends to establish its own terminal infrastructure facilities. Main criteria: space and capacity constraints <b>EU-Chile:</b> 1) All member States, except EE, HU: unbound 2) All member States, except RO: none; RO : unbound 3) All member States, except RO: none; RO : unbound	
11.E.f Supporting services for rail transport services CPC 743	No commitments		<b>EU-CARIFORUM, EU-Korea:</b> 1) All member States: none 2) All member States: none 3) All member States: none, except BG: unbound for direct branching (incorporation is required). Participation in Bulgarian companies is limited to 49% <b>EU-Chile:</b> no commitments	

Note: CPC means the United Nations Provisional Central Products Classification. Restrictions to national treatment are indicated only to the extent that they differ from or add specific restrictions to market access restrictions. GATS mode 4 commitments are not included in this table since they are not directly comparable with FTA mode 4 commitments as they cross-refer to different horizontal commitments. Entries may have been summarized but their substance has been preserved. "Unbound\*" means unbound due to lack of technical feasibility. A Classification heading followed by an asterisk (e.g. CPC51310\*) means "part of" the heading, unless otherwise explicitly stated. The nomenclature used for the first column of the table is that of WTO document MTN.GNS/W/120. The European Economic Area (EEA) and the agreements between EU and Albania, Croatia, FYROM and Montenegro have not been integrated in this comparative table in view of their different nature (deep integration beyond trade concerns) and of their different structure (based on the approximation of law and devoid of schedules of commitments). The description of the commitment is drawn from document S/C/W/273 draft consolidated EU-25 schedule, dated 9 October 2006, which has not yet entered into force; and Schedules BG (S/DCS/W/BRG dated 24 January 2003) and RO (S/DCS/W/ROM dated 24 January 2003); and that of the MFN exemptions from document TN/S/OEECR1, draft offer from the European Union and its member States, dated 29 June 2005, pp. 418-431. Those documents constitute the sources where the commitments and draft MFN exemptions appear in a consolidated manner taking into account the full membership of EU-25 for commitments and for MFN exemptions.

Source: Information provided by the European Commission.

Table A4. 12 Summarized trade regimes of maritime transport services

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
11.A.a Passenger transportation (CPC 7211) and 11.A.b Freight transportation (CPC 7212)	Sectoral qualification: MT, excluding cabotage 1) 2) 3) All member States : unbound, except LV, MT: none	<p><b>FI:</b>  <u>Description:</u> existing or future reciprocal measures taken by Finland exempting vessels registered under the foreign flag of a specified other country from the general prohibition to operate cabotage transport in Finland. <u>Countries to which the measures apply:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> regional specificity of the maritime cabotage transport</p> <p><b>SW:</b>  <u>Description:</u> reciprocal measures taken by Sweden based upon existing or future agreements exempting vessels registered under the foreign flag of the countries indicated in column 3) from the general prohibition to operate cabotage traffic in Sweden. <u>Countries to which the measures apply:</u> all countries with which bilateral or plurilateral agreements are in force. <u>Duration:</u> indefinite. <u>Justification:</u> to regulate cabotage traffic based on reciprocal agreements</p> <p><b>BG:</b>  <u>Description:</u> equality in freight liftings originating in the ports of partners to the agreement and equality in freight earnings. <u>Countries to which the measure applies:</u> India and other countries with which bilateral cargo-sharing agreements are or will be</p>	<p><b>EU- CARIFORUM:</b>                      Sectoral qualification: all member States, excluding cabotage                      1) 2) All member States: none, except BG, CY, DE, EE, ES, FR, FI, EL, IT, LT, LV, MT, PL, PT, RO, SI and SE: feeder services by authorisation                      3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment; BG: unbound for direct branching (incorporation is required); BG, CY, DE, EE, ES, FR, FI, EL, IT, LT, LV, MT, PL, PT, RO, SI, SE: feeder services by authorisation</p> <p><b>EU-Korea:</b>                      Sectoral qualification: all member States, excluding cabotage                      1) 2) All member States: none                      3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment</p> <p><b>EU-Chile:</b>                      Sectoral qualification: all member States, excluding cabotage</p>	<p><b>EU Korea:</b>                      All member States :  <u>Description:</u> measures concerning the establishment, activities and operations of shipping companies beyond the commitment undertaken by Korea in Annex 7-A. <u>Countries to which the measures apply:</u> unspecified. <u>Duration:</u> indefinite. <u>Justification:</u> international agreements in the context of overall trade relations</p> <p><b>FI:</b>  <u>Description:</u> existing or future reciprocal measures taken by Finland exempting vessels registered under the foreign flag of a specified other country from the general prohibition to operate cabotage transport in Finland. <u>Countries to which the measures apply:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> regional specificity of the maritime cabotage transport</p> <p><b>SW:</b>  <u>Description:</u> reciprocal measures taken by Sweden based upon existing or future agreements exempting vessels registered under the foreign flag of the countries indicated in column 3) from the general prohibition to operate cabotage traffic in Sweden. <u>Countries to which the measures apply:</u> all countries with which bilateral or plurilateral agreements are in force.</p>

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
		<p>concluded. <u>Duration</u>: indefinite. <u>Justification</u>: bilateral international agreements in the context of overall trade relations</p> <p><b>BG:</b> <u>Description</u>: preferential treatment of national lines belonging to countries which are parties to the UN Convention on a Code of Conduct on Liner Conference. <u>Countries to which the measure applies</u>: the parties to the UN Convention on a Code of Conduct on Liner Conference. <u>Duration</u>: indefinite. <u>Justification</u>: international agreement</p>	<p>Market access:</p> <p>1) a) liner shipping: none, except BG, RO: unbound b) bulk, tramp, and other international shipping, including passenger transportation: none, except BG, RO: unbound 2) BG, RO: unbound 3) a) establishment of registered company for the purpose of operating a fleet under the national flag of the State of establishment: unbound for all member States, except LV, MT: none b) other forms of commercial presence for the supply of international maritime transport services (as defined below under Definitions concerning maritime transport): none, except BG, RO: unbound</p> <p>National treatment:</p> <p>1) a) liner trade: none, other than the exceptional case where a member State would have to enforce EC Regulation 954/79, Article 2, par. 2; for all member States, except: BG, RO: unbound b) BG, RO: unbound 2) BG, RO: unbound 3) a) All member States: unbound, except LV, MT: none b) BG, RO: unbound</p>	<p><u>Duration</u>: indefinite. <u>Justification</u>: to regulate cabotage traffic based on reciprocal agreements</p>
11.A.c Rental of vessels with crew CPC 7213	<p>All member States, except FI, LT: CPC 7213 and 7223; FI: only CPC 7213; LT: only CPC 7223 1) All member States, except AT, BG, CY, CZ, DE, EE, FR, HU, LT, LV, MT, PL, RO, SE, SI, SK: none;</p>	<p><b>DE:</b> <u>Description</u>: chartering-in of foreign ships by consumers resident in Germany may be subject to a condition of reciprocity. <u>Countries to which</u></p>	<p><b>EU-CARIFORUM:</b> 1) AT, BG, CY, CZ, DE, EE, HU, LT, MT, PL, RO, SK, SI, SE: unbound; all other member States: none 2) All member States: none</p>	<p><b>EU-Korea:</b> <b>DE:</b> <u>Description</u>: chartering-in of foreign ships by consumers resident in Germany may be subject to a condition of</p>

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
	<p>FR: chartering of all ships is subject to prior notification; AT, BG, CY, CZ, DE, EE, HU, LT, MT, PL, RO, SE, SI, SK: unbound; LV: unbound for CPC 7223</p> <p>2) All member States, except AT, BG, CY, DE, EE, FR, HU, MT, PL, RO, SE, SI, SK: none; FR: chartering of all ships is subject to prior notification; AT, BG, CY, DE, EE, HU, MT, PL, RO, SE, SI, SK: unbound</p> <p>3) All member States, except AT, BG, CY, CZ, EE, FR, HU, LT, MT, PL, RO, SE, SI, SK: none; FR: chartering of all ships is subject to prior notification; AT, BG, CY, CZ, EE, HU, LT, MT, PL, RO, SE, SI, SK: unbound</p>	<p><u>the measure applies</u>: all countries. <u>Duration</u>: indefinite. <u>Justification</u>: need to ensure effective market access and equivalent treatment for German service suppliers</p>	<p>3) All member States: none, except BG: unbound for direct branching (incorporation is required) participation in Bulgarian companies limited to 49%</p> <p><b>EU-Korea:</b></p> <p>1) AT, BG, CY, CZ, DE, EE, HU, LT, MT, PL, RO, SK, SI, SE: Unbound, all other member States none</p> <p>2) All member States: none</p> <p>3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment; BG: unbound for direct branching (incorporation is required) participation in Bulgarian companies limited to 49%</p> <p><b>EU-Chile:</b></p> <p>Market access:</p> <p>1) FR: chartering of all ships is subject to prior notification; AT, BG, CY, CZ, EE, HU, LT, LV, MT, PL, RO, SE, SK, SI: unbound</p> <p>2) FR: chartering of all ships is subject to prior notification; AT, BG, CY, EE, HU, MT, PL, RO, SE, SI, SK: unbound</p> <p>3) FR: chartering of all ships is subject to prior notification; AT, BG, CY, CZ, EE, HU, LT, LV, MT, PL, RO, SE, SK, SI: unbound</p>	<p>reciprocity. <u>Countries to which the measure applies</u>: all countries. <u>Duration</u>: indefinite. <u>Justification</u>: need to ensure effective market access and equivalent treatment for German service suppliers</p>

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
			National treatment: 1) AT, BG, CY, CZ, EE, HU, LT, LV, MT, PL, RO, SE, SK, SI: unbound 2) AT, BG, CY, EE, HU, LV, MT, PL, RO, SE, SI, SK: unbound 3) AT, BG, CY, CZ, EE, HU, LT, LV, MT, PL, RO, SE, SK, SI: unbound	
11.A.d Maintenance and repair of vessels CPC 8868*	1) All member States: unbound, except EE, HU, LV: none 2) 3) All member States: unbound, except EE, HU, LV, SI: none		<b>EU- CARIFORUM, EU-Korea:</b> 1) BE, BG, CY, DE, DK, ES, FI, FR, EL, IE, IT, LT, MT, NL, PL, PT, RO, SE, SI, UK: unbound; all other member States: none 2) 3) none <b>EU-Chile:</b> Maintenance and repair of vessels, except for EE, LV, SI; EE, LV: CPC 8868; SI: CPC 8868** 1) All member States, except EE, HU, LV: unbound; EE, HU, LV: none 2) 3) All member States, except EE, HU, LV, SI: unbound; EE, HU, LV, SI: none	
11.A.e Pushing and towing services CPC 7214	1) 2) All member States: unbound, except LT, LV: none 3) All member States: unbound, except LV: none		<b>EU- CARIFORUM:</b> 1) AT, BE, CY, DE, DK, ES, EE, FI, FR, EL, IE, IT, MT, NL, PL, PT, SI, SE, UK: unbound; all other member States: none 2) All member States: none 3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of	

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
			<p>establishment; BG: unbound for direct branching (incorporation is required) participation in Bulgarian companies limited to 49%; FI: pushing and towing services can only be provided by ships operating under the Finnish flag</p> <p><b>EU-Korea:</b>  1) All member States: unbound*  2) All member States: none  3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK:  unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment;  BG: unbound for direct branching (incorporation is required). Services auxiliary to Maritime Transport that require the use of vessels can only be provided by vessels operating under the Bulgarian flag</p>	
11.A.f Supporting services for maritime transport CPC 745**	LT: ship agency services (part of 7480) 1) 2) All member States: unbound, except LT, LV: none 3) All member States: unbound, except LT, LV; LT: in order to obtain a licence to establish a commercial presence a manager must speak the Lithuanian language; LV: none		<p><b>EU-CARIFORUM:</b>  1) 2) All member States: none  3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK:  unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment;  BG: unbound for direct branching (incorporation is required).  Participation in</p>	

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
			<p>Bulgarian companies is limited to 49%; other member States: none</p> <p><b>EU-Korea:</b></p> <p>1) 2) All member States: none</p> <p>3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment; BG: unbound for direct branching (incorporation is required). For Maritime Agency Services, Korean shipping companies have the right to establish branch offices which may act as agents for their principal offices. Services auxiliary to maritime transport that require the use of vessels can only be provided by vessels operating under the Bulgarian flag; FI: services auxiliary to maritime transport that require the use of vessels can only be provided by vessels operating under the Finnish flag; other member States: none</p>	
Maritime cargo handling	<p>EE, LV, LT: CPC 741</p> <p>1) All member States, except EE, LV: unbound; EE, LV: none</p> <p>2) All member States, except EE, LV, LT: unbound; EE, LV, LT: none</p> <p>3) All member States, except EE, LV, LT: unbound; EE, LV, LT: none</p>	<p><b>BG:</b></p> <p><u>Description:</u> the right to supply these kind of services is granted by the Bulgarian Republic on a reciprocal basis and under bilateral agreements with the countries concerned.</p> <p><u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> the aim of the</p>	<p><b>EU-CARIFORUM:</b></p> <p>1) AT, BE, BG, CY, CZ, DE, DK, ES, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK: unbound; other member States: none</p> <p>2) All member States: none</p> <p>3) All member States: none, except IT: economic needs test for maritime cargo-handling</p>	<p><b>EU-Korea</b></p> <p><b>BG:</b></p> <p><u>Description:</u> the right to supply these kinds of services is granted by the Bulgarian Republic on a reciprocal basis and under bilateral agreements with the countries concerned.</p> <p><u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite.</p>



Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
		<p>application of such a measure is to guarantee equal access to the market of other countries for Bulgarian suppliers of such kinds of services</p>	<p>services. Main criteria: number of and impact on existing establishments, population density, geographic spread and creation of new employment; BG: unbound for direct branching (incorporation is required). Participation in Bulgarian companies is limited to 49%</p> <p><b>EU-Korea:</b>  1) All member States: unbound*  2) All member States: none  3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment; BG: unbound for direct branching (incorporation is required); IT: economic needs test for maritime cargo-handling services. Main criteria: number of and impact on existing establishments, population density, geographic spread and creation of new employment; other member States: none</p> <p><b>EU-Chile:</b>  1) All member States: unbound*  2) 3) (**) BG, MT, RO: unbound; (**) public utility concession or licensing procedures may apply in case of occupation of the public domain</p>	<p><u>Justification:</u> the aim of the application of such a measure is to guarantee equal access to the market of other countries for Bulgarian suppliers of such kinds of services</p>

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
Customs clearance services	No commitments		<p><b>EU-CARIFORUM:</b>            1) All member States: unbound            2) All member States: none            3) All member States: none, except SI: only juridical persons established in the Republic of Slovenia (no branches) can perform customs clearance; BG: unbound for direct branching (incorporation is required). Participation in Bulgarian companies is limited to 49%</p> <p><b>EU-Korea:</b>            1) 2) All member States: none            3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment; BG: unbound for direct branching (incorporation is required); SI: only juridical persons established in the Slovenia (no branches) can perform customs clearance; other member States: none</p> <p><b>EU-Chile:</b>            1) All member States: unbound*            2) 3) (***) BG, MT, RO: unbound; (***) public utility concession or licensing procedures may apply in case of occupation of the public domain</p>	

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
Container station and depot services	No commitments	<p><b>BG:</b>  <u>Description:</u> the right to supply these kind of services is granted by the Bulgarian Republic on a reciprocal basis and under bilateral agreements with the countries concerned.  <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> the aim of the application of such a measure is to guarantee equal access to the market of other countries for Bulgarian suppliers of such kinds of services</p>	<p><b>EU-CARIFORUM:</b>  1) All member States: unbound  2) All member States: none  3) All member States: none, except BG: unbound for direct branching (incorporation is required). Participation in Bulgarian companies is limited to 49%</p> <p><b>EU-Korea:</b>  1) 2) All member States: none  3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment;  BG: unbound for direct branching (incorporation is required; other member States: none</p> <p><b>EU-Chile:</b>  1) All member States: unbound*  2) 3) (**) BG, MT, RO: unbound; (**) public utility concession or licensing procedures may apply in case of occupation of the public domain</p>	<p><b>EU-Korea:</b>  <b>BG:</b>  <u>Description:</u> the right to supply these kind of services is granted by the Bulgarian Republic on a reciprocal basis and under bilateral agreements with the countries concerned.  <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> the aim of the application of such a measure is to guarantee equal access to the market of other countries for Bulgarian suppliers of such kinds of services</p>

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
Maritime agency services	No commitments		<p><b>EU-CARIFORUM:</b>            1) 2) All member States: none            3) All member States: none, except BG: unbound for direct branching (incorporation is required). Participation in Bulgarian companies is limited to 49%</p> <p><b>EU-Korea:</b>            1) 2) All member States: none            3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment; BG: unbound for direct branching (incorporation is required). For maritime agency services, Korean shipping companies have the right to establish branch offices which may act as agents for their principal offices. Services auxiliary to maritime transport that require the use of vessels can only be provided by vessels operating under the Bulgarian flag; other member States: none</p> <p><b>EU-Chile:</b>            1) Unbound            2) 3) (**) BG, MT, RO: unbound;            (**) public utility concession or licensing procedures may apply in case of occupation of the public domain</p>	

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
Maritime freight forwarding	<p>CPC 748</p> <p>1) 2) All member States, except BG, CY, CZ, HU, MT, PL, RO, SE, SK: none; BG: none other than commercial presence required; CY, CZ, HU, MT, PL, RO, SK, SE: unbound</p> <p>3) All member States, except BG, CY, CZ, HU, MT, PL, RO, SE, SK: none; BG: none other than foreign persons can only supply services through participation in Bulgarian companies with 49% limitation on equity participation and through branches; CY, CZ, HU, MT, PL, RO, SK, SE: unbound</p>		<p><b>EU-CARIFORUM:</b></p> <p>1) 2) All member States: none</p> <p>3) All member States: none, except BG: unbound for direct branching (incorporation is required). Participation in Bulgarian companies is limited to 49%</p> <p><b>EU-Korea:</b></p> <p>1) 2) All member States: none</p> <p>3) AT, BE, BG, CY, CZ, DE, DK, ES, EE, FI, FR, EL, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SI, SE, UK: unbound for the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment; BG: unbound for direct branching (incorporation is required). Services auxiliary to Maritime Transport that require the use of vessels can only be provided by vessels operating under the Bulgarian flag; other member State: none</p> <p><b>EU-Chile:</b></p> <p>1) Unbound</p> <p>2) 3) (**) BG, MT, RO: unbound; (**) public utility concession or licensing procedures may apply in case of occupation of the public domain</p>	

Sectors <sup>a</sup>	GATS commitments	GATS and CARIFORUM MFN exemptions	FTA commitments	Other FTA MFN exemptions
Access to/use of port services (additional commitments)	No commitments		<b>EU-Chile:</b> National treatment with regard to, <i>inter alia</i> , access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading. In ports services also include 1) pilotage; 2) towing and tug assistance; 3) provisioning, fuelling, and watering; 4) garbage collecting and ballast waste disposal; 5) port captain's services; 6) navigation aids; 7) shore-based operational services essential to ship operations, including communications, water, and electrical supplies; 8) emergency repair facilities; 9) anchorage, berth and berthing services	

a Composite maritime classification associating elements drawn from the CPC-MTN.GNS /W/120 list and from the WTO maritime model schedule. Commitments belonging to item 11.H of the MTN.GNS/W/120 list ("services auxiliary to all modes of transport) are not described here.

Note: CPC means the United Nations Provisional Central Products Classification. Restrictions to national treatment are indicated only to the extent that they differ from or add specific restrictions to market access restrictions. GATS mode 4 commitments are not included in this table since they are not directly comparable with FTA mode 4 commitments as they cross-refer to different horizontal commitments. Entries may have been summarized but their substance has been preserved. "Unbound\*" means unbound due to lack of technical feasibility. A Classification heading followed by an asterisk (e.g. CPC51310\*) means "part of" the heading, unless otherwise explicitly stated. The nomenclature used for the first column of the table is that of WTO document MTN.GNS/W/120. The European Economic Area (EEA) and the agreements between EU and Albania, Croatia, FYROM and Montenegro have not been integrated in this comparative table in view of their different nature (deep integration beyond trade concerns) and of their different structure (based on the approximation of law and devoid of schedules of commitments). The description of the commitment is drawn from document S/C/W/273 draft consolidated EU-25 schedule, dated 9 October 2006, which has not yet entered into force; and Schedules BG (S/DCS/W/BRG dated 24 January 2003) and RO (S/DCS/W/ROM dated 24 January 2003); and that of the MFN exemptions from document TN/S/OEECR1, draft offer from the European Union and its member States, dated 29 June 2005, pp. 418-431. Those documents constitute the sources where the commitments and draft MFN exemptions appear in a consolidated manner taking into account the full membership of EU-25 for commitments and for MFN exemptions.

Source: Information provided by the European Commission.

**Table A4. 13 Summarized trade regimes of road transport services**

Sectors	GATS commitments	GATS and CARIFORUM MFN exemption	FTA commitments	Other FTA MFN exemptions
11.F.a Passenger transport CPC 7121 (other scheduled passenger transportation) and CPC 7122 (other non-scheduled passenger transportation)	<p>Sectoral qualifications: all member States CPC 71213(i.e. interurban regular transportation) and 7122 only, except FI, LV: idem less CPC 71221 (taxi); and LT: the totality of CPC 7121, 7122. For LV, LT, RO, SE: cabotage excluded</p> <p>1) All member States: unbound</p> <p>2) All member States : none, except AT, BG, CY, CZ, EE, HU, MT, PL, SI, SK: unbound</p> <p>3) All member States, except AT, BG, CZ, EE, FI, HU, LV, LT, MT, PL, RO, SE, SI, SK: for transport within a member State (cabotage), by a carrier established outside that member State: unbound, except for rental of non-scheduled services of buses with operator (71223) where no limitation will apply as from 1996; AT, BG, CZ, EE, HU, MT, PL, SI, SK: unbound; FI: authorization required, not extended to foreign registered vehicles; LT, RO: none; LV: authorization required (licence), not extended to foreign registered vehicles; SE: authorization required for commercial land transport service operations. Authorization is based on the applicant's financial situation, experience and capability to supply the services. Limitations on the use of leased vehicles for such operations</p> <p>For 7122: ES: economic needs test</p> <p>For 71221 (taxi services): all member States, except those which are unbound and except FI, LT, LV, SE: economic needs test<sup>a</sup>, plus DK: access for natural persons only, and local establishment requirement; IT: access for natural persons only</p> <p>For 71222 (limousine services): DK: access for natural persons only, and local establishment requirement; FI: authorization required, not extended to foreign registered vehicles; IT: access for natural persons only, and economic needs test; LV: authorization required (licence), not extended to foreign registered vehicles; PT: economic needs test</p> <p>For 71213 (intercity bussing services): IT, ES, IE: economic needs test; FR: unbound; FI: authorization required, not extended to foreign registered vehicles; DK: economic</p>	<p><b>All member States:</b></p> <p><b>Description:</b> provisions in existing or future agreements on international road haulage (including combined transport - road/rail) and passenger transport, concluded between the EU or their member States and third countries, which: (a) reserve or limit the provision of a transport service between the contracting parties or across the territory of the contracting parties to vehicles registered in each contracting party; or (b) provide for tax exemption for such vehicles. <u>Countries to which the measures apply:</u> Switzerland, states in Central, Eastern and South-Eastern Europe and all members of the Commonwealth of Independent States, Albania, Turkey, Lebanon, Israel, Syria, Jordan, Egypt, Tunisia, Algeria, Morocco, Cyprus, Malta, Iran, Afghanistan, Iraq, Kuwait. <b>Duration:</b> indefinite. <b>Justification:</b> the need for exemption is linked to the regional characteristics of the cross-border provision of road transport services</p> <p><b>CZ-BG:</b></p> <p><b>Description:</b> measures that are taken under existing or future agreements and which reserve or limit the provision of transport services and specify operating conditions, including transit permits and/or preferential road taxes of transport services into, in, across and out of the Czech Republic and Bulgaria to the contracting parties concerned. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <b>Duration:</b> indefinite. <b>Justification:</b> to protect the integrity of road transport infrastructure and the environment and to regulate traffic rights in the territory of the Czech Republic and between the countries concerned</p> <p><b>FI:</b></p> <p><b>Description:</b> provisions of existing and future reciprocal bilateral and plurilateral agreements on international road transport (including combined transport, road/rail) reserving cabotage transport in</p>	<p><b>EU-CARIFORUM, EU-Korea:</b></p> <p>1) All members States: unbound</p> <p>2) All members States: none</p> <p>3) EU: foreign investors cannot provide transport services within a member State (cabotage), except for rental of non-scheduled services of buses with operator and economic needs test for taxi services. Main criteria: number of and impact on existing establishments, population density, geographic spread, impact on traffic conditions and creation of new employment; AT, BG: exclusive rights and/or authorization can only be granted to nationals of the member States of the EU and to juridical persons of the EU having their headquarters in the EU; BG: unbound for direct branching (incorporation is required); FI, LV: authorization is required, not extended to foreign registered vehicles; LV, SE: requirement for established entities to use vehicles with national registration; ES: economic needs test for CPC 7122. Main criteria: local demand; IT, PT: economic needs test for limousine services. Main criteria: number of and impact on existing establishments, population density, geographic spread, impact on traffic conditions and creation of new employment; ES, IE, IT: economic needs test for intercity bussing services. Main criteria: number of and impact on existing establishments, population density, geographic spread, impact on traffic conditions and creation of new employment; FR: unbound for intercity bussing services</p> <p><b>EU-Chile:</b></p> <p>All member States, except FI, LV, LT, RO: CPC 71213 and 7122; FI: CPC 71222 and 71223; LV: CPC 71213, 71222, 71223; LT: CPC 7121, 7122. For LV, LT: cabotage excluded</p> <p>1) All members States: unbound</p> <p>2) National treatment: none, except BG, CY, CZ, EE, HU, MT, PL, SI, SK: unbound. Market access: none, except CY, CZ, EE, HU, MT, PL, SI, SK: unbound</p>	<p><b>EU-Korea:</b></p> <p><b>RO:</b></p> <p><b>Description:</b> in Romania, permission for vehicles registered in the countries indicated in column 3) to transport goods and/or passengers is in accordance with existing or future bilateral road agreements. Road cabotage is reserved for domestic registered vehicles. <u>Countries to which the measure applies:</u> Austria, Albania, Belgium, Bulgaria, Czech Republic, Cyprus, Croatia, Denmark, Switzerland, Latvia, Lithuania, France, Finland, Italy, Iran, Germany, Greece, Luxembourg, Great Britain, Norway, Netherlands, Poland, Portugal, Spain, Sweden, Slovak Republic, Syria, Slovenia, Turkey, Hungary, and possibly other countries in the future. <b>Duration:</b> indefinite. <b>Justification:</b> The need for the exemption is linked to the regional specificity of the cross-border provision of road transport services</p> <p><b>All member States:</b></p> <p><b>Description:</b> provisions in existing or future agreements on international road haulage (including combined transport - road/rail) and passenger transport, concluded between the Community or the member States and third countries, which: (a) reserve or limit the provision of transport service between the contracting parties or across the territory of the contracting parties to vehicles registered in each contracting party<sup>b</sup>; or (b) provide for tax exemption for such vehicles. <u>Countries to which the measures apply:</u> Switzerland, states in Central, Eastern and South-Eastern Europe and all members of the Commonwealth of Independent States, Albania, Turkey, Lebanon, Israel, Syria, Jordan, Egypt, Tunisia, Algeria, Morocco, Iran, Afghanistan, Iraq, and Kuwait. <b>Duration:</b> indefinite. <b>Justification:</b> the need for the exemption is linked to the regional specificity of the cross-border provision of road transport services</p> <p><b>CZ:</b></p> <p><b>Description:</b> measures that are taken</p>



Sectors	GATS commitments	GATS and CARIFORUM MFN exemption	FTA commitments	Other FTA MFN exemptions
	<p>needs test and residence and citizenship requirement for the manager; LV: authorization required (licence and special permit), not extended to foreign registered vehicles; PT: access through incorporation only</p> <p>For 71223: FI: authorization required, not extended to foreign registered vehicles; LV: authorization required (licence), not extended to foreign registered vehicles</p>	<p>Finland. <u>Countries to which the measures apply</u>: all countries with which bilateral or plurilateral agreements are in force. <u>Duration</u>: indefinite <u>Justification</u>: regional specificity of the road transport services</p> <p><b>AT</b>: <u>Description</u>: VAT-exemption in Austria is limited to international passenger transport carried out by foreign entrepreneurs by means of motor vehicles registered in countries indicated below. <u>Countries to which the measure applies</u>: successor states of former Yugoslavia, Poland, Switzerland, successor States of the former USSR (with the exception of the Baltic States, Azerbaijan, Georgia, Moldova and Uzbekistan), Czech Republic, Slovak Republic, Hungary. <u>Duration</u>: indefinite. <u>Justification</u>: reciprocity; facilitating of the development of international touring</p> <p><b>AT</b>: <u>Description</u>: exemption from vehicle tax in Austria under certain conditions on the grounds of declarations of reciprocity limited to vehicles registered in the countries indicated below. <u>Countries to which the measure applies</u>: Poland, Hungary. <u>Duration</u>: indefinite. <u>Justification</u>: reciprocity; facilitating of the development of international touring and/or international transport of goods</p> <p><b>AT</b>: <u>Description</u>: exemption from vehicles tax in Austria under certain conditions on the grounds of de facto reciprocity limited to vehicles registered in the countries indicated below. <u>Countries to which the measure applies</u>: Bulgaria, Israel, Monaco, San Marino, Turkey, Hungary, Vatican City, United States. <u>Duration</u>: indefinite. <u>Justification</u>: reciprocity; facilitating the development of international touring and/or international transport of goods</p> <p><b>BG</b>: <u>Description</u>: vehicle tax and VAT-exemption on the basis of conventions or on the grounds of de facto reciprocity</p>	<p>3) National treatment: unbound for transport within a member State (cabotage), by a carrier established outside that member State; AT, BG, HU, MT, PL, SK: unbound; LV, SE: requirement on established entities to use vehicles with national registration. Market access: for transport within a member State (cabotage), by a carrier established outside that member State: unbound, except for rental of non-scheduled services of buses with operator (71223) (*) where no limitation will apply as from 1996; AT, HU, PL, MT, SK: unbound; SE: authorization required for commercial land transport service operations. Authorization is based on the applicant's financial situation, experience and capability to supply the services. Limitations on the use of leased vehicles for such operations. For 7122: ES: economic needs test. For 71221 (taxi services): all member States, except in SE: economic needs test, plus DK: access for natural persons only, and local establishment requirement; IT: access for natural persons only. For 71222 (limousine services): DK: access for natural persons only, and local establishment requirement; FI: authorization required, not extended to foreign registered vehicles; IT: access for natural persons only, and economic needs test; LV: authorization required (licence), not extended to foreign registered vehicles. PT: economic needs test. For 71213 (intercity bus services): IT, ES, IE: economic needs test; FR: unbound; FI: authorization required, not extended to foreign registered vehicles; DK: economic needs test; LV: authorization required (licence and special permit), not extended to foreign registered vehicles; PT: access through incorporation only. For 71223: LV: authorization required (licence), not extended to foreign registered vehicles</p>	<p>under existing or future agreements, and which reserve or limit the provision of transport services and specify operating conditions, including transit permits and/or preferential road taxes of transport services into, in, across and out of the Czech republic to the contracting parties concerned. <u>Countries to which the measures apply</u>: all countries with which agreements are or will be in force. <u>Duration</u>: indefinite. <u>Justification</u>: to protect the integrity of road transport infrastructure and the environment, and to regulate traffic rights in the territory of the Czech Republic and between the countries concerned</p> <p><b>FI</b>: <u>Description</u>: provisions in existing or future reciprocal bilateral and plurilateral agreements on international road transport (including combined transport, road and rail) reserving cabotage transport in Finland. <u>Countries to which the measure applies</u>: all countries with which bilateral or plurilateral agreements are in force. <u>Duration</u>: indefinite. <u>Justification</u>: Regional specificity of the road transport services</p> <p><b>AT</b>: <u>Description</u>: VAT exemption in Austria is limited to international passenger transport carried out by foreign entrepreneurs by means of motor vehicles registered in the countries indicated below. <u>Countries to which the measure applies</u>: successor states of former Yugoslavia, Switzerland, and successor states of the former USSR (with the exception of the Baltic States, Azerbaijan, Georgia, Moldova and Uzbekistan). <u>Duration</u>: indefinite. <u>Justification</u>: reciprocity; and facilitating of the development of international touring</p> <p><b>AT</b>: <u>Description</u>: exemption from vehicle tax in Austria under certain conditions on the grounds of de facto reciprocity, limited to vehicles registered in the countries indicated below. <u>Countries to which the measure applies</u>: Israel, Monaco,</p>

Sectors	GATS commitments	GATS and CARIFORUM MFN exemption	FTA commitments	Other FTA MFN exemptions
		<p>limited to the countries indicated. <u>Countries to which the measure applies:</u> Austria and other European countries. <u>Duration:</u> indefinite. <u>Justification:</u> reciprocity. Historical links and specific regional aspects</p> <p><b>LT:</b> <u>Description:</u> measures that are taken under bilateral agreements and which set the provisions of transport services and specify operating conditions, including bilateral transit and other transport permits for transport services into, through and out of the territory of the Republic of Lithuania to the contracting parties concerned, road taxes and levies. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> to protect the transport infrastructure and the environment and to regulate traffic rights in the territory of Lithuania and between countries concerned</p> <p><b>RO:</b> <u>Description:</u> permission for vehicles registered in another specified country to transport goods and/or passengers in accordance with existing and future bilateral road agreements. Road cabotage is reserved to domestic registered vehicles. <u>Countries to which the measure applies:</u> Austria, Albania, Belgium, Bulgaria, Czech Republic, Cyprus, Croatia, Denmark, Switzerland, Latvia, Lithuania, France, Finland, Italy, Iran, Germany, Greece, Luxembourg, Great Britain, Norway, Netherlands, Poland, Portugal, Spain, Sweden, Slovak Republic, Syria, Slovenia, Turkey, Hungary, and possibly other countries in future. <u>Duration:</u> indefinite. <u>Justification:</u> the need for the exemption is linked to the regional specificity of the cross-border provision of the road transport services</p> <p><b>PL:</b> <u>Description:</u> reciprocity requirement concerning supply of transport services by suppliers of countries concerned - in, into and across the territory of such countries. <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> system of reciprocal</p>		<p>San Marino, Turkey, Vatican City, and United States. <u>Duration:</u> indefinite. <u>Justification:</u> reciprocity; and facilitating of the development of international touring and/or international transport of goods</p> <p><b>LT:</b> <u>Description:</u> measures that are taken under bilateral agreements and which set the provisions for transport services and specify operating conditions, including bilateral transit and other transport permits for transport services into, through and out of the territory of the Republic of Lithuania to the contracting parties concerned, and road taxes and levies. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> To protect the transport infrastructure and the environment, and to regulate traffic rights in the territory of Lithuania and between countries concerned</p> <p><b>BG:</b> <u>Description:</u> measures taken under existing or future agreements which reserve and/or restrict the supply of these kinds of transportation services and specify the terms and conditions of this supply, including transit permits and/or preferential road taxes, in the territory of the Republic of Bulgaria or across the borders of the Republic of Bulgaria. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> protection of the integrity of the infrastructure, as well as environmental protection, and regulation of traffic rights in the territory of the Republic of Bulgaria and between the countries concerned</p> <p><b>PL:</b> <u>Description:</u> a reciprocity requirement concerning supply of transport services by suppliers of countries concerned, in, into and across the territory of such countries. <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> system of existing and future reciprocal agreements on transport cooperation (or of similar character), and</p>

Sectors	GATS commitments	GATS and CARIFORUM MFN exemption	FTA commitments	Other FTA MFN exemptions
11.F.b Freight transportation CPC 7123	No sectoral qualification for all member States, except LV, LT, RO, SE: cabotage excluded 1) All member States: unbound 2) All member States none, except AT, BG, CY, CZ, EE, HU, MT, PL, SI, SK: unbound 3) All member States: unbound for transport within a member State by a carrier established in another member State, plus IT: for transport within the country, licensing subject to an economic needs test; AT, BG, CY, CZ, ES, EE, HU, MT, PL, SI, SK: unbound; FI: authorization required, not extended to foreign registered vehicles; LV: authorization required (licence), not extended to foreign registered vehicles; LT, RO: none; SE: authorization required for commercial land transport service operations. Authorization is based on the applicant's financial situation, experience and capability to supply the services. Limitations on the use of leased vehicles for such operations; national treatment: LV, SE: requirement on established utilities to use vehicles with national registration	agreements - existing and future - on transport cooperation (or of similar character) and promotion and protection of foreign investments, implementing - among others - transportation quotas resulting from bilaterally agreed system of permits <b>SK:</b> <u>Description:</u> measures that are taken under existing or future agreements and which reserve or limit the provision of transport services and specify operating conditions, including transit permits and/or preferential road taxes of transport services into, in, across and out of the Slovak Republic to the contracting parties concerned. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite <u>Justification:</u> To protect the integrity of road transport infrastructure and the environment and to regulate traffic rights in the territory of the Slovak Republic and between the countries concerned <b>SP (freight transport only):</b> <u>Description:</u> authorization for the establishment of a commercial presence in Spain may be refused to service suppliers, whose country of origin does not accord effective market access to Spanish service suppliers. <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> Need to ensure effective market access and equivalent treatment for Spanish service suppliers	<b>EU-CARIFORUM, EU-Korea:</b> 1) All member States: unbound 2) All member States: none 3) All member States: none, except AT, BG: exclusive rights and/or authorization can only be granted to EC nationals and to EC juridical persons having their headquarters in the EC; BG: unbound for direct branching (incorporation is required); FI, LV: authorization required, not extended to foreign registered vehicles; LV, SE: requirement on established entities to use vehicles with national registration; IT, SK: economic needs test. Main criteria is local demand <b>EU-Chile:</b> 1) All member States: unbound Market access: 2) None, except BG, CY, CZ, EE, HU, MT, PL, SI, SK: unbound 3) For transport within a member State by a carrier established in another, member State: unbound; AT, BG, CY, CZ, ES, EE, HU, MT, PL, SI, SK: unbound; IT: for transport within the country, licensing subject to an economic needs test; FI: authorization required, not extended to foreign registered vehicles; SE: authorization required for commercial land transport service operations. Authorization is based on the applicant's financial situation, experience and capability to supply the services. Limitations on the use of leased vehicles for such operations National treatment: 2) BG, HU, MT, PL, SK: unbound 3) Unbound for transport within a member State by a carrier established in another member State; AT, BG, ES, HU, PL, MT, SK: unbound; SE: requirement on established utilities to use vehicles with national registration	promotion and protection of foreign investments, implementing, <i>inter alia</i> , transportation quotas resulting from bilaterally agreed system of permits <b>SK:</b> <u>Description:</u> measures that are taken under existing or future agreements, and which reserve or limit the provision of transport services and specify operating conditions, including transit permits and/or preferential road taxes of transport services into, in, across and out of the Slovak Republic to the contracting parties concerned. <u>Countries to which the measures apply:</u> all countries with which agreements are or will be in force. <u>Duration:</u> indefinite. <u>Justification:</u> to protect the integrity of road transport infrastructure and the environment, and to regulate traffic rights in the territory of the Slovak Republic and between the countries concerned <b>SP (freight only):</b> <u>Description:</u> authorization for the establishment of a commercial presence in Spain may be refused to service suppliers, whose country of origin does not accord effective market access to Spanish service suppliers. <u>Countries to which the measure applies:</u> all countries. <u>Duration:</u> indefinite. <u>Justification:</u> need to ensure effective market access and equivalent treatment for Spanish service suppliers
Of which international truck transport	1) All member States: unbound 2) 3) All member States: unbound, except EE: none			

Sectors	GATS commitments	GATS and CARIFORUM MFN exemption	FTA commitments	Other FTA MFN exemptions
11.F.c Rental of commercial vehicles with operator CPC 7124	<p>1) All member States, except AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: none; AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: unbound</p> <p>2) All member States, except AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: none; AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: unbound</p> <p>3) All member States, except AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: none; AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: unbound</p>		<p><b>EU-CARIFORUM, EU-Korea:</b></p> <p>1) All member States: none, except AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: unbound</p> <p>2) All member States: none</p> <p>3) All member States: none, except AT: authorization can only be granted to EC nationals and to EC juridical persons having their headquarters in the EC; FI: authorization required, not extended to foreign registered vehicles; BG: unbound for direct branching (incorporation is required). Participation in Bulgarian companies is limited to 49%</p> <p><b>EU-Chile:</b></p> <p>1) AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: unbound</p> <p>2) AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: unbound</p> <p>3) AT, BG, CY, CZ, EE, HU, LV, LT, MT, PL, RO, SK, SI, SE: unbound</p>	
11.F.d Maintenance and repair of road transport equipment CPC 6112 + 8867	<p>Sectoral qualifications: all member States CPC 6112, except AT, CZ, EE, HU, SK: CPC 6112 + 8867; BG: CPC 6112 and part of 8867; FI: CPC 6112 and parts of CPC 88; SI: part of CPC 6112</p> <p>1) All member States: none, except BG, CY, CZ, FI, LT, LV, MT, PL, RO, SE, SK: unbound</p> <p>2) All member States: none, except CY, LT, MT, PL, RO: unbound</p> <p>3) All member States: none, except LV: authorization required (licence); SE: operators allowed to establish and maintain their own terminal infrastructure facilities, subject to space and capacity constraints; CY, CZ, LT, MT, PL, RO, SK: unbound</p>		<p><b>EU-CARIFORUM, EU-Korea:</b></p> <p>Sectoral qualification: maintenance and repair of motor vehicles, motorcycles, snowmobiles and road transport equipment (CPC 6112, 6122, part of 8867, and part of 8868)</p> <p>1) 2) None</p> <p>3) None, except SE: an economic needs test applies when an investor intends to establish its own terminal infrastructure facilities. Main criteria: space and capacity constraints</p> <p><b>EU-Chile:</b></p> <p>All member States, except BG, CZ, EE, FI, HU, SI, SK: CPC 6112; BG: 6112, part of 8867; CZ, EE, HU, SK: 6112 + 8867; FI: 6112 and parts of 88; SI: part of CPC6112 (*)</p> <p>1) All member States: unbound*</p> <p>2) All member States: none, except MT, RO: unbound</p> <p>3) Market access: all member States: none, except SE: operators allowed to establish and maintain their own terminal infrastructure facilities, subject to space and capacity constraints; MT, RO: unbound. National treatment: MT, RO: unbound</p>	

Sectors	GATS commitments	GATS and CARIFORUM MFN exemption	FTA commitments	Other FTA MFN exemptions
11.F.e Supporting services for road transport services CPC 744	Sectoral qualification: for LV only CPC 7441, CPC 7449) 1) All member States: unbound 2) All member States, except LV: unbound; LV: none 3) All member States, except LV: unbound; LV: authorization required (agreement with bus station, license)		<b>EU-CARIFORUM, EU Korea:</b> 1) All member States: none 2) All member States: none 3) All member States: none, except BG: unbound for direct branching (incorporation is required). Participation in Bulgarian companies is limited to 49% <b>EU-Chile:</b> LV: CPC 7441 and 7449 1) All member States: unbound 2) All member States, except LV: unbound; LV: none 3) Market access: all member States, except LV: unbound; LV: authorization required (agreement with bus station, license). National treatment: all member States, except LV: unbound ; LV none	

a Needs test based on the number of service suppliers in the local geographic area.

b With regard to Austria, the part of the MFN exemption regarding traffic rights covers all countries with which bilateral agreements on road transport or other arrangements relating to road transport exist or may be desirable.

Note: CPC means the United Nations Provisional Central Products Classification. Restrictions to national treatment are indicated only to the extent that they differ from or add specific restrictions to market access restrictions. GATS mode 4 commitments are not included in this table since they are not directly comparable with FTA mode 4 commitments as they cross-refer to different horizontal commitments. Entries may have been summarized but their substance has been preserved. "Unbound\*" means unbound due to lack of technical feasibility. A Classification heading followed by an asterisk (e.g. CPC51310\*) means "part of" the heading, unless otherwise explicitly stated. The nomenclature used for the first column of the table is that of WTO document MTN.GNS/W/120. The European Economic Area (EEA) and the agreements between EU and Albania, Croatia, FYROM and Montenegro have not been integrated in this comparative table in view of their different nature (deep integration beyond trade concerns) and of their different structure (based on the approximation of law and devoid of schedules of commitments). The description of the commitment is drawn from document S/C/W/273 draft consolidated EU-25 schedule, dated 9 October 2006, which has not yet entered into force; and Schedules BG (S/DCS/W/BRG dated 24 January 2003) and RO (S/DCS/W/ROM dated 24 January 2003); and that of the MFN exemptions from document TN/S/OEECR1, draft offer from the European Union and its member States, dated 29 June 2005, pp. 418-431. Those documents constitute the sources where the commitments and draft MFN exemptions appear in a consolidated manner taking into account the full membership of EU-25 for commitments and for MFN exemptions.

Source: Information provided by the European Commission.

**Table A4. 14 Summarized trade regimes of pipelines transport services**

Sectors	GATS commitments*	FTA commitments
11.G Pipeline transport (CPC 713)		
11.G.a Pipeline transport of fuels (CPC 7131)	1) All member States: unbound, 2) All member States: unbound, except HU, LT: none 3) All member States: unbound, except HU: service may be provided through a contract of concession granted by the State or the local authority; and LT: none	<b>EU-CARIFORUM, EU-Korea:</b> 1) All member States: unbound, 2) All member States: unbound, except HU, LT: none 3) All member States: unbound, except HU, LT: none <b>EU-Chile:</b> 1) All member States: unbound 2) All member States: unbound, except HU, LT: none 3) All member States: unbound, except HU, LT: none; HU: services might be provided through a Contract of concession granted by the state or the local authority
11.G.b Pipeline transport of goods other than fuel (CPC 7139)	1) All member States: unbound 2) All member States: unbound, except HU, LT: none 3) All member States: unbound, except HU: service may be provided through a contract of concession granted by the State or the local authority; and LT: none	<b>EU-CARIFORUM, EU-Korea:</b> 1) All member States: unbound 2) All member States: unbound except HU, LT: none 3) None, except AT: exclusive rights can only be granted to EU nationals and to EU juridical persons having their headquarters in the EU <b>EU-Chile:</b> 1) All member States: unbound, 2) All member States: unbound except HU, LT: none 3) All member States: unbound except HU, LT: none; HU: services might be provided through a Contract of concession granted by the state or the local authority

Note: CPC means the United Nations Provisional Central Products Classification. Restrictions to national treatment are indicated only to the extent that they differ from or add specific restrictions to market access restrictions. GATS mode 4 commitments are not included in this table since they are not directly comparable with FTA mode 4 commitments as they cross-refer to different horizontal commitments. Entries may have been summarized but their substance has been preserved. "Unbound\*" means unbound due to lack of technical feasibility. A Classification heading followed by an asterisk (e.g. CPC51310\*) means "part of" the heading, unless otherwise explicitly stated. The nomenclature used for the first column of the table is that of WTO document MTN.GNS/W/120. The European Economic Area (EEA) and the agreements between EU and Albania, Croatia, FYROM and Montenegro have not been integrated in this comparative table in view of their different nature (deep integration beyond trade concerns) and of their different structure (based on the approximation of law and devoid of schedules of commitments). The description of the commitment is drawn from document S/C/W/273 draft consolidated EU schedule, dated 9 October 2006, which has not yet entered into force. This document constitutes the only source where the commitments appear in a consolidated manner taking into account the full membership of EU-25 for commitments.

Source: WTO Secretariat, based on information provided by the European Commission.